7

SUPREME COURT OF THE UNITED STATES.

No. 1089

THE EASTERN TRANSPORTATION LINE,
Plaintiff in Error,

vs.

HOBART COOPER, AS ADMINISTRATOR, &C.,
Defendant in Error.

WRIT OF ERROR TO THE SUPREME COURT OF THE
STATE OF NEW YORK.

the purchasers shall be bound to *continue* the payment of one-half of one per cent., semi-annually, to the sinking fund until all the outstanding bonds are discharged, under the penalty of an annulment of the contract of purchase, and the forfeiture of the purchase money paid in.

Now, the question is what was the payment of one-half of one per cent., to be paid to the sinking fund, by the purchasers, to be *continued* to be paid upon? Certainly upon the same indebtedness upon bonds which the company which issued them were bound to pay; and that is upon the indebtedness on bond account. It seems quite clear that the amount of indebtedness on bond account, means upon bonds outstanding, as there can be no indebtedness remaining upon bonds which have been canceled. It follows, as a necessary sequence, that the Florida Railroad purchasers under the sale made by the trustees, are liable to pay only one half of one per cent., semi-annually, upon the bonds outstanding; that is upon two hundred and twenty-eight in number, calling for one thousand dollars each. This they have done. There is, therefore, nothing due from the said purchasers to the sinking fund, and no ground for either legal or equitable relief.

It is also quite clear that if the law were otherwise the complainants, Vose & Wagner, could not be joined with the receiver in a bill to recover the deficiency. The court having undertaken to administer a trust fund will not permit any interference by any party. The action of the receiver is the action of the court itself.

March 31. 79 M D. N. H. Swayne

9 Atty pl

Oct. 7. 1878

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SUPREME COURT, KINGS COUNTY.

Hobart Cooper, as Administrator, &c., for Mary Ann Cooper, deceased.
Respondent. — *Statement.* 1
against
The Eastern Transportation Line, and Jeremiah J. Austin.
Appellants.

This action was commenced by the service of the summons and complaint on The Eastern Transportation Line, on April 17, 1876, and on Jeremiah J. Austin, on April 21, 1876.

The answer of The Eastern Transportation Line was served on May 26, 1876, and that of Jeremiah J. Austin, on June 5, 1876.

The trial was begun on May 15, 1877, and the verdict was rendered on May 19, 1877.

The motion to set aside the verdict and for a new trial, was made and denied May 19, 1877.

Judgment was entered May 25, 1877. 2

Notice of appeal by The Eastern Transportation Line, together with an undertaking for costs and to stay execution, were filed and served June 4, 1877.

Notice of appeal by Jeremiah J. Austin, was filed and served on June 25, 1877.

By order entered on June 25, 1877, George S. Wilkes was substituted as attorney for Jeremiah J. Austin, in the place of Owen and Gray. No change of parties and no other change of attorneys has taken place.

SUPREME COURT,

County of Kings.

3 Hobart Cooper, as Administrator of the estate of Mary Ann Cooper, deceased,
Plaintiff,
against — *Summons for Relief.*
The Eastern Transportation Line, Jeremiah J. Austin and John Doe (whose true name is unknown),
Defendants.

To the Defendants:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office, Nos. 261 and 263 Broadway, New York City, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the complaint.

Dated New York, April 15, 1876.

4 CHILDS & HULL,
Plaintiffs' Attorneys.
261 and 263 Broadway, N. Y.

NEW YORK SUPREME COURT,

KINGS COUNTY.

HOBART COOPER, as Administrator of the Estate of MARY ANN COOPER, deceased,
Plaintiff,
5 THE EASTERN TRANSPORTATION LINE, JEREMIAH J. AUSTIN and JOHN DOE (whose true name is unknown),
Defendants.
Complaint.

The abovenamed plaintiff, as administrator as aforesaid, by Childs & Hull, his attorneys, complains of the defendants, and respectfully shows to this Court.

First. That at the time hereinafter mentioned, the defendant, "The Eastern Transportation Line," was and still is a corporation, organized and doing business under the laws of the State of New York, and owned and used vessels to be employed for hire in towing vessels, and at the said time owned and used in its said business the steam tugboat "U. S. Grant."

6 That at the time hereinafter mentioned, the defendants, Jeremiah Austin and John Doe, were engaged in the business of towing, under the name of "The Albany and Canal Line of Steam Towboats," and were the owners of, and then used in their said business, the steam tug-boat "John N. Parker."

Second. That on the 9th day of October, 1875, at the city of New York, Hobart Cooper, who was then the captain of the canal boat "N. L. Lee," employed the defendant "The Eastern Transportation Line," to safely and carefully tow said canal boat, which was then ladened with coal, and on which said canal boat there were Mary A. Cooper, his wife, and Mary E. Cooper and Carrie A. Cooper, the minor children of this plaintiff, from a place called the "Stakes," on the North River, in the harbor of New York, to New Haven, Connecticut, at a compensation of eighty dollars, agreed to be paid therefor.

Third.—That on the night of the said 9th of October, 1875, under the agreement aforesaid, the defendant, "The Eastern Transportion Line," by its agents and servants, made fast the said steam tug-boat "U. S. Grant" to said canal boat "N. L. Lee," and upon which latter then were this plaintiff, his said wife, and his two children, and was proceeding to tow said canal boat from said city of New York to New Haven, when about opposite and near to Pier No. 1, North River, in said 7 city of New York, the agents and servants of the said defendants, "The Eastern Transportation Line," having the management, custody and control of the said tug boat "U. S. Grant," and of said canal boat "N. L. Lee," and the agents and servants of the defendants, Austin & Doe, having the management, custody and control of the tug boat "John N. Parker," which was then approaching from an opposite direction, and having in tow the schooner "George P. McFarland," each and all of them aforesaid so negligently, carelessly and unskilfully navigated said tug boats, and each of them, and discharged their duties in respect thereto, that through the wrongful act, neglect and default of the defendants, and each of them, their agents and servants, the said canal boat "N. L. Lee," with great force and violence, collided with the schooner "George P. McFarland," then in tow of the said steam tug "John N. Parker," 8 the stem of said schooner striking the bow of said canal boat and crushing in the same, and parting four strong lines which fastened said canal boat "N. L. Lee" to said tugboat "U. S. Grant," and carrying said canal boat, on which then were the plaintiff's wife and his daughter, Mary E. Cooper, against the tide, the distance of about one hundred and fifty feet astern from said tugboat "U. S. Grant." That so great was the force of said collision, and the damage of said canal boat "N. L. Lee," caused by the negligence, carelessness and unskilfulness of the said defendants and each of them, their agents and servants as aforesaid, that about twenty minutes after said collision, the said canal boat "N. L. Lee" sank, and the said Mary Ann Cooper, the wife, and Mary Emma Cooper, the daughter of this plaintiff, were drowned. That after said collision the master, 9 crew, agents and servants of the said defendanss, and each of them, neglected and refused to rescue plaintiff's said wife and daughter from said canal boat, although requested by plaintiff so to do, and although informed by this plaintiff that said canal boat was rapidly sinking, all of which, by care and exertion, could have been done.

Fourth.—The plaintiff further shows that neither of said tugboats were properly manned, but, on the contrary, the masters and the crews thereof were incompetent, intemperate and wholly unfitted and unskilled to perform or discharge the duties of said business.

That neither of said tugboats had a look-out, nor did either of them display proper lights, and that neither of them gave timely or proper signals as they approached each other, nor used due care or vigilance to prevent such collision.

Fifth.—That the said Mary Ann Cooper died, as aforesaid, on the 9th day of October, '75, intestate, and such proceedings were had before the Surrogate of the county of Kings, that afterwards on the 3d day of March, 1876, this plaintiff was duly appointed 10 by the said Surrogate, administrator of all and singular the goods, chattels and credits, which were of the said Mary Ann Cooper, and that thereupon this plaintiff duly qualified as such administrator, and entered upon the discharge of the duties of his said office, and now is such administrator.

Sixth. That the said Mary Ann Cooper left one child, Carrie A. Cooper, her next of kin, and this plaintiff, her husband, who have sustained pecuniary damage resulting from the death of the said Mary Ann Cooper, caused by the wrongful act, negligence and default of the defendants as aforesaid, to the extent of at least five thousand dollars.

Wherefore, the plaintiff as administrator as aforesaid, demands judgment against the defendants for the pecuniary damage so sustained as aforesaid, in the sum of five thousand dollars, besides the costs of this action. 11

CHILDS & HULL,
Plaintiff's Att'ys.

City and County of New York, ss:

Hobart Cooper, being duly sworn, says, he is the plaintiff in this action; that the foregoing complaint is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

HOBART COOPER.

Sworn to before me, April 11th, 1875.

12 HENRY HOYT,
Notary Public.
N. Y. Co.

SUPREME COURT.

KINGS COUNTY.

HOBART COOPER, as administrator of the estate of MARY ANN COOPER, deceased,
Plaintiff,
against
THE EASTERN TRANSPORTATION LINE, JEREMIAH AUSTIN and JOHN DOE (whose true name is unknown),
Defendants.

Answer of the Eastern Transportation Line. 13

"The Eastern Transportation Line," one of the defendants above named, by Benedict, Taft & Benedict, its attorneys, answers the complaint herein, as follows:

First. This defendant admits, that at the time in said complaint mentioned, it was and still is a corporation, organized and doing business under the laws of the State of New York, and owned and used vessels to be employed for hire in towing vessels, and at the said time owned and used in its said business the steam tug-boat "U. S. Grant." 14

Second. This defendant denies that it has any knowledge or information sufficient to form a belief as to whether the defendants, Jeremiah Austin and John Doe, were engaged in the business of towing, under the name of "The Albany and Canal Line of Steam Towboats," or whether they were the owners of, or then used in their said business the steam tugboat, "John N. Parker."

Third. This defendant admits, that on the ninth day of October, 1875, at the city of New York, it entered into an agreement with the plaintiff, as master of said canal boat, "N. L. Lee," to tow said canal boat in the usual and customary manner, and not otherwise, from a place called, "The Stakes," on the North River, in the harbor of the city of New York, to New Haven, Connecticut, for a compensation of eighty dollars, 15 to be paid therefor.

Fourth.—This defendant denies that it has any knowledge or information sufficient to form a belief as to whether Mary A. Cooper, in said complaint mentioned, was the wife of the plaintiff, or whether Mary E. Cooper and Carrie A. Cooper were minor children of the plaintiff, or whether said persons were on said canal-boat at the time in said complaint mentioned.

Fifth.—This defendant admits that on the night of the said ninth of October, 1875, under the agreement aforesaid, this defendant, by its agents and servants, made fast its said steam tug-boat, "U. S. Grant," of which, by its agents and servants, it had the management, custody and control, to said canal-boat, "N. L. Lee," and was proceeding to tow said canal-boat from said place called The Stakes, to New Haven aforesaid.

Sixth.—This defendant admits that while said steam-tug "U. S. Grant," with said canal-boat in tow, was proceeding down the Hudson River, on the voyage aforesaid, and when about opposite Pier No 1, North River, in the City of New York, the steam tug-boat "John N. Parker," with the schooner
16 "George P. McFarland" in tow, was seen approaching from an opposite direction, and that soon thereafter said schooner, still being in tow of said steam-tug "John N. Parker," ran into said canal boat in tow of said steam-tug "U. S. Grant," by which said collision the lines which fastened said canal-boat to said tug were parted, and said canal-boat carried some distance astern from said tug "U. S. Grant," and that shortly after, and much less than twenty minutes after said collision, said canal boat sunk, and two persons who were on board thereof were drowned.

Seventh.—This defendant denies that it, by its agents and servants or otherwise, ever had the management, custody and control of said canal boat "N. L. Lee."

Eighth.—This defendant denies that it has any knowledge
17 or information sufficient to form a belief, as to whether the wife and two children of said plaintiff were on said canal boat when it was taken in tow by their said steamtug "U. S. Grant" as aforesaid, or whether the agents and servants of the defendants, Austin and Doe, had the management, custody and control of said tugboat "John N. Parker," a tthe time of said collision, or whether the persons who were drowned as aforesaid were the wife and daughter of the plaintiff.

Ninth.—This defendant denies that its agents and servants in charge of its said tug-boat, or either or any of them, negligently, carelessly or unskillfully navigated its said tugboat, or so discharged their duties in respect thereto, that said collision happened through any wrongful act, neglect or default on the part of this defendant, its agents or servants.

18 And it also denies that any damage whatsoever which was done to said canal boat was caused by any negligence, carelessness or unskillfulness on the part of this defendant, its agents or servants, or either or any of them.

And it also denies that the master and crew of its said tug, or its agents and servants, or either or any of them, refused to rescue any person or persons from said canal boat, or neglected to make the attempt by every possible means so to do; or that the said persons could have been rescued from said canal boat after the collision, by any care or exertion on the part of those in charge of the "U. S. Grant."

Tenth.—This defendant denies each and every allegation contained in the fourth sub-division of said complaint so far as they affect its said tug-boat.

Eleventh.—This defendant denies that said collision, or the loss of life subsequent thereto, was caused by any carelessness, negligence or unskillful management on the part of this defendant, its agents or servants, or either or any of them, and alleges that said canal-boat "N. L. Lee" was securely fastened to its said steam tug "U. S. Grant" in the usual and proper manner, and that its said steam tug "U. S. Grant" was in all respects well manned, equipped and provided, and had her proper regu- 19
lation lights set in their proper places, and burning brightly, and had her usual and proper master and crew on board, who were competent, skilled, and vigilant, and were attending to the duties of their respective stations, and had a proper, competent and vigilant look-out, and gave proper and timely signals according to law, and was carefully and skilfully navigated, and used all possible care and vigilance to prevent said collision, and to rescue from said canal-boat the persons who were drowned by the sinking of the same; and that said collision, and the loss of life subsequent thereto, were caused solely by the carelessness, negligence and unskilful management of the plaintiff or his agents and servants in charge of said canal boat, or by the carelessness, negligence and unskilful management of those in charge of said steam-tug, "John N. Parker;" or by the carelessness, negligence and unskilful 20
management of those in charge of said schooner "George P. McFarland," or by carelessness, negligence and unskillful management on the part of those in charge of said canal boat, and said steam-tug "John N. Parker," and said schooner, or of those in charge of said tug "John N. Parker," and said schooner, without any fault on the part of this defendant, its agents or servants, or either or any of them.

Twelfth.—This defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in the fifth subdivision of said complaint.

Thirteenth.—This defendant denies that it has any knowledge or information sufficient to form a belief as to whether Mary Ann Cooper left one child, Carrie A. Cooper, or whether said Carrie A. Cooper was her next kin, or whether plaintiff was her 21
husband.

Fourteenth.—This defendant denies that the death of said Mary Ann Cooper was caused by any wrongful act, negligence or default of it, its agents or servants, or either or any of them; or that said Carrie A. Cooper, or the plaintiff or either of them, or any person whatsoever, has suffered or sustained pecuniary damage thereby in the sum of five thousand dollars, or any sum whatever.

Fifteenth.—This defendant denies each and every allegation in said complaint contained not hereinbefore specifically admitted or denied.

Wherefore, this defendant demands judgment that the complaint herein be dismissed as to it with costs.

BENEDICT, TAFT & BENEDICT,
Att'ys for the Defendant.
The Eastern Trans. Line,
No. 64 Wall St., N. Y.

22

City and County of New York, ss.:

S. W. Milbank, of said city, being duly sworn, says that he is the treasurer of the Eastern Transportation Line, one of the defendants above named.

The foregoing answer is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

SAMUEL W. MILBANK.

Sworn to before me, this 24th day of May, 1876.

SAM. H. VALENTINE,
Notary Public,
N. Y. Co.

23

SUPREME COURT,

Kings County.

Hobart Cooper, as administrator of the estate of Mary Ann Cooper, deceased,
Plaintiff,
against
The Eastern Transportation Line, Jeremiah J. Austin and John Doe, whose true name is unknown,
Defendants.

Answer of Jeremiah J. Austin.

24

The defendant Jeremiah J. Austin, by Owen & Gray, his attorneys answering the complaint herein upon information and belief, admits that the defendant "The Eastern Transportation Line," was, and still is the owner of the tug-boat "U. S. Grant," and other tug boats employed for hire in towing vessels, but he has no knowledge or information sufficient to form a belief as to whether or not said defendant is a corporation, organized and doing business under the laws of the State of New York, or any other State. He denies that Jeremiah Austin and John Doe were or are engaged in the business of towing under the name of "The Albany and Canal Line of Steam Tow-Boats," or under any other name, or that they were the owners of the steam tugboat "John W. Parker."

He further, upon information and belief, admits and says,
that the captain of the canal boat "U. S. Lee," employed the
defendant, "The Eastern Transportation Line," to tow said
canal boat with her cargo of coal from a place called the "Stakes"
on the North River, in the harbor of the City of New York, to 25
New Haven, Connecticut, a certain compensation to be paid
therefor, but of the amount of which compensation, and of the
particulars of said contract to tow, this defendant is ignorant.

He has no knowledge or information sufficient to form a belief whether or not Mary A. Cooper was the wife of the plaintiff, and Mary E. Cooper and Carrie C. Cooper were his minor children, or whether they or either of them were, at the time or any other time, on board said canal boat.

He further, upon information and belief, admits that on the
night of the 9th of October, 1875, the defendant "The Eastern
Transportation Line," by its agents and servants made the said
steam-tug "U. S, Grant" fast to said canal boat "N. L. Lee,"
and proceeded to tow said canal boat from New York City to
New Haven, and that while so doing, said canal boat collided
with the schooner "George P. McFarland," in tow of the steam- 26
tug "John N. Parker," which was then approaching in an opposite
direction, but he denies that the tugboat "John N.
Parker" was negligently, carelessly and unskillfully navigated,
or that said collision was caused by reason of the wrongful act,
neglect or default of this defendant, or of his agents in that
behalf, or of the officers and crew in charge of said tugboat.

He has no knowledge or information sufficient to form a belief
whether or not the stern of the schooner struck the bow of the
canal boat, and crushed the same, or whether or not four strong
lines, or any other lines which fastened said canal boat to said
"U. S. Grant," were parted; or whether or not said canal boat
was carried against the tide the distance of 150 feet, or any
other number of feet, astern from said "U. S. Grant;" or
whether or not before or at the time of the collision, or thereafter,
plaintiff's wife and his daughter Mary E. Cooper were on board 27
said canal boat.

He has no knowledge or information sufficient to form a belief whether or not the force and violence of said collision was so great as to cause said canal boat to sink within twenty minutes thereafter, or whether or not the plaintiff's alleged wife, Mary Ann Cooper, and his alleged daughter Mary Emma Cooper, were drowned.

He denies that the agents and servants of this defendant, or the master and crew of the tug boat "John N. Parker," neglected and refused to rescue plaintiff's wife and daughter from said canal boat, or that they wererequested so to do by plaintiff, or that plaintiff informed said defendant, or his agents and servants, that said canal boat was sinking.

He denies that the said tug boat "John N. Parker," was not properly manned or equipped, or that the master and crew thereof were incompetent, intemperate, and wholly unfitted and unskilled to perform or discharge the duties of their said business; he further denies that said tug boat "John N. Parker," did not have a lookout or did not display proper lights, or that timely and proper signals were not given to the 28 "U. S. Grant," as the vessels approached, or that due care and vigilance were not used on the part of the "John N. Parker," to prevent said collision.

He has no knowledge or information sufficient to form a belief whether or not the said Mary Ann Cooper died on the 9th day of October, 1875, or at any other time, intestate, or whether or not such proceedings were had before the Surrogate of Kings County, or any other county; that on the 3d day of March, 1876, or any other time, plaintiff was duly appointed by said Surrogate, or any other Surrogate, administrator of all and singular the goods, chattels and credits of the said Mary Ann Cooper; or whether or not plaintiff qualified as such administrator, and entered upon the discharge of the duties of his said office.

He has no knowledge or information sufficient to form a be-
29 lief whether or not the said Mary Ann Cooper left one child, Carrie A. Cooper, her next of kin, or whether or not the plaintiff herein was her husband.

He denies that said Carrie A. Cooper and plaintiff have, by reason of any fault, negligence or carelessness on his part, suffered or sustained pecuniary damage from the death of said Mary Ann Cooper, to the extent of $5,000, or any other sum whatever.

And this defendant further answering, says that before and at the time of said collision, said tug-boat "U. S. Grant," was the agent or servant of, and in the actual service of the plaintiff. That the tug-boat "John N. Parker," at and before the time of the collision, was well and properly manned and equipped; that she had competent and skillful officers and crew; that she had all her lights properly set and burning
30 brightly, and a competent look-out properly stationed and attending to his duties; that she was in a lawful employment, and engaged in a lawful service, and that she was navigated according to law and the rules of navigation, and did not cause, or contribute to the collision, but that said collision was caused by the fault, negligence and carelessness of the tugboat "U. S. Grant," and of the plaintiff.

That if the plaintiff's wife, Mary A. Cooper, and his daughter Mary Emma Cooper, were drowned, as alleged in the complaint, then the same happened by reason of the negligence on the part of the plaintiff and the defendant, "The Eastern Transportation Line;" that no attempts were made by plaintiff or said defendant, to rescue and save said persons, although there

was ample time so to do, and the same might and could have been done.

That as this defendant is informed and believes, as soon as the collision happened, said plaintiff, without making any attempt to rescue and save his said wife and daughter, at once abandoned said canal boat, and never returned to her, which he might have done, nor did he in any manner attempt to rescue and save his said wife and daughter. 31

And this defendant denies each and every allegation of the complaint in any wise to the contrary hereof.

Wherefore, he demands that the complaint therein be dismissed with costs.

OWEN & GRAY,
Att'y's for Def't J. J. Austin.

State of New York,
Albany County, ss.

Jeremiah J. Austin, one of the defendants in the above entitled action named, being duly sworn, says, that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. 32

JEREMIAH J. AUSTIN.

Sworn to before me this 1st day of June, 1876.

M. H. FARRELL,
Com'r of Deeds, Albany, N. Y.

The issues made by the pleadings came on for trial before the Hon. Calvin E. Pratt and a jury, on the 15th, 16th, 17th, 18th and 19th days of May, 1877.

Hobart Cooper, sworn for plaintiff: I am the plaintiff in this action; I was the captain of the canal boat "N. L. Lee," on the night of the 9th of October last; about 10 o'clock that night, we lay in Jersey City, at a place called the Stakes; we had come from Trenton, we were loaded with coal, and were bound to New Haven; we were taken in tow by the tugboat "Grant" at the Stakes; the tow was made up by two boats each side of the tug; we were on the right-hand side, the outside boat; the name of the boat that was between us and the "Grant," was the "Coalport;" we had a spring line from my stern cleat to the forward cleat of the "Coalport," and had a backing line from the stern cleat of the "Coalport" to the middle cleat, had two cross lines up forward, one on the stern, and there was a line from the tug to my outside cleat forward, and one to my outside stern cleat astern; the crew on the "Grant" made up that tow. 33

With respect to the bow of the "Grant," I should think the bows of the canal boats were about 20 feet ahead of the "Grant"—projected 20 feet ahead of the tug; I could't say exactly at what time of night we started from the Stakes; they came after us about 10 o'clock; all our boats were not over there; they fetched two there and two of them they took from there; I will not be certain; I think it must have been about 34 11, or somewheres near, when we left the Stakes; then we went across towards the New York shore, and the first I saw the captain blew for the ferry boat to go under his stern, and instead of that he went ahead of us; and that made the captain stop and back his tug; after she got by, I sighted the smoke or the steam on the tug-boat coming up; I suppose she was working below; we got down a little ways further, and she hove in sight, and the first I heard was the captain of the tug approaching (I didn't know what tug it was at that time), blow one whistle; that whistle was answered by the "Grant" by one whistle, and soon after the "Parker" blew two whistles. The one whistle from the "Parker" meant to go to the right. It was answered by one whistle, which meant that the "Grant" would go to the right; shortly after the "Parker" blew two whistles, and it was answered by the "Grant" by two whistles; 35 I says to the captain, "we are going to have a collision, and started for the door of the pilot house; he commenced to blow his whistles as I jumped on the side of the "Coalport" that layed aside of me. I jumped on to a pile of coal that they had kept on deck, and as I jumped on the "Coalport" he was blowing his whistles then, three whistles; I jumped on the deck of the boat; my daughter stood on the hatch; I told her to call her mother—tell her mother to come up quick; I grabbed a fender, and I saw that they were coming with so much force that it was going to be apt to hurt me, so I dropped the fender and took hold of her, and ran to the side of the boat and jumped on the "Coalport;" as I jumped I fell, and as I rose, the line struck me and knocked me down; when I rose again, I says to the captain of the "Grant," "Charley, for God's sake save my family;" my wife was upon deck begging to be saved; "help 36 me," and my child says, "Pa, save me, save your Mamie;" I told them not to be scared; we went right back—went right across; the stern line held us; the stem of the schooner struck the canal boat about three feet from the stem on the right hand side.

The "McFarland" must have struck my boat about the time I jumped, for the line struck me soon after as I rose, she being a little heavy, I fell. We drifted right down the river right straight, for we were trying to turn around, the tide dragged us down stream instead of turning; the tug could not handle the tow; she hadn't power to handle them; she didn't handle us; instead of bending around, we kind of sagged right down the river; my boat was cut entirely free from the "Coalport." After she was separated, she lay about that way, right across (illustrating), right across the stern of the tug, a little down stream if anything; after the boat struck, my wife halloed to me to save her; I told her we would; after the boat struck, the captain of the "Grant" ordered his men to lower a boat; they did not do it; they got a small boat off the "Coalport," and when they got her and got her launched, they had no oars for her; had to go to the captain to get the oars—to get the key, and go to the bow and unlock the bow, and go down and 37 get the oars out; it was a scow, and was about forward of the cabin of the "Coalport" on the hatch; the boat on which my wife and little girl were, sunk after they lowered that boat.

After they lowered the boat, Mr. Hicks said he wasn't a good rower, but there was a man there that was, and they wanted a good rower, because there wasn't room for but one man in the boat; I was in the boat; they asked me if I could row, and I said "No;" then the fireman of the tug changed his clothes and came over and jumped in the boat.

The "Coalport" was next to my boat; she did not break away; she struck her on the outside of the stem, right outside of the stem; the "Grant" had got round with her bow up stream before the light disappeared from the cabin; from the time of the collision until the time that I saw the light go out of my cabin was about 20 minutes; at the time I first saw the 38 steam on the "Parker," I was in the pilot-house of the "Grant;" I remained in the pilot-house until she blew two whistles; the last two whistles; then I went on my own boat; the "Grant" that night did not have a lookout; at this time the crew of the "Grant" were putting in fenders on the side of the boat about amidships by the stern of the "Coalport"—about 20 feet from the stern of the "Coalport."

The way the "Grant" came to take me in tow that night, was this: I was loaded in Trenton, and boats loaded in Trenton are supposed to tow with the Eastern Towing Company, or Eastern Transportation Line, and I reported that I was ready, to Captain McWilliams—that I was ready to go; I believe he was an agent then; I was ready to go, and he said he would send for me that night; Captain Williams is in the Eastern Towing Company's employ; he is an agent of the Eastern Tow- 39 ing Company; I was to pay the Eastern Transportation Company for towing me to New Haven, either 60 or 80 dollars; that was to be paid when I returned; that was the usual way to do; when you returned you paid; at the time that I was taken in tow by the "Grant;" I think the captain of the "Grant" knew that my wife and two daughters were on board of my boat; I think they were on deck when he first came there; I think that my two girls were on deck, and my wife stood on the hatch when he first came there; he had towed me before; I lived on my boat; I never saw my wife and daughter afterwards.

I first saw the "Parker" on the right hand bow; she was off

to the right when I first seen her; we were heading down stream; this happened about opposite Pier 1, on the North River; when I first saw the steam, the "Parker" was a good ways below the schooner—she was, may be, 800 or 900 yards off when I first saw her; I saw the smoke of her before I saw her at all; she was working ahead; I didn't see her when I saw the smoke; when I first did see her, she was about 600 yards off;
40 that was on the right bow; when she blew her first whistle, I guess she was maybe four or five hundred yards off; when she blew the second, I couldn't tell exactly how near we were; I did not afterwards see her over the right bow; she was right in front of us coming up—right head on to us.

I don't know whether the "Grant" changed her course from the time I first saw the "Parker" until the time of the collision; I think she did not; on the left hand side of this tow, as we came across the river, there was a big steamboat—one of Austin's boats—with sixty-six boats in tow—six boats abreast between the pier and us; they were canal-boats mainly; they were going up the river; they were standing still; they didn't appear to be moving much ahead; the tide was ebb tide—flowing out; our course was pretty near with the tide.

My wife was 37 years old; I had a wife and three children;
41 the eldest was 21 years old—the youngest was 13, going on 14; my next to the oldest and youngest were in the boat; my oldest was a son; I jumped off with the middle one, she was 16 years old, my wife did all the household duties on the boat—made the clothes for the girls and herself; I had no one but my wife and the girls to attend to the duties there.

After the three whistles were given, between that and the time of the collision, I should think half a minute elapsed—may be a minute; I had time to jump on the boat, run forward to put in a fender and go back to the cabin and grab up one of my girls; I did not notice how far the "Grant" was from the "Parker" at the time the three whistles were blown; I didn't put my fender between my boat and the one that was coming towards me, because I saw that we would come together with such force I was afraid I would get hurt.

42 The tug "Grant," at the time of this collision, I should think, must have been going six miles an hour; I would not say for certain, somewheres along there; I could not say whether she had slacked up at the time of the collision; I think she hadn't slacked up; that she was in motion at the time; we were not in the middle of the river; we were close to the New York shore; we did not have room to avoid each other so near the shore; the "Parker" could not have gone between us and the tow going up the river. The river there, at that place, was, I think, about a mile wide; there was a considerable space between the "Minnesota" and us; I should think, may be, 200 feet; I don't know but what there was more; there was that much; there was plenty of room between the "Minnesota" and this Albany tow if they used proper precaution.

My boat was pretty full in the bow, the effect of the blow was that it cut right in it, broke the futtock timbers and cut the deck right in; I could not say what the other three boats were loaded with; my boat was loaded with coal.

Cross-examined:

I can't say for certain at what time I got ashore that night,
after the collision; I guess it was, may be, one o'clock or two; 43
I don't know; I would not say for certain; I didn't look at no
clock afterwards; I landed at pier 1 or 2; two, I guess; I did
not meet a policeman then, I think; I wouldn't say where I
did meet him; somewheres, I believe, I did; I won't say where
I did meet him exactly; I do not remember his name; I don't
know as I would know it if I heard it; I told him what had
happened; then I went with him to the police station. I
saw the sergeant in charge of the police station; I told
him my boat was sunk, and my wife and child were drowned;
I don't know whether he made a memorandum or not; I made
no more charge, only that my boat was sunk, and my wife and
child; I didn't know whether any one might be arrested or
not; I don't know as I told him so, that somebody might be
arrested; I told him what happened; I supposed he would try
and arrest somebody, and then I went away with my daughter 44
after that; I don't know whether it was the next day, or the
day after, I went to the Police Station again; it was either the
next day or the day after that, before I went to the Police
Station—the day after I had been to the office of the Eastern
Transportation Company; I remember seeing Mr. Coffin there;
I told Mr. Coffin the occurrence there, what had happened on
this night, and Mr. Coffin took down a statement; he took it
down as he wanted it, not as I told him; I told him what hap-
pened; there was something said between me and him, about
my making a protest, and Mr. Coffin told me that he would
assist me about making a protest; he said, he would make a
protest for me; he went with me to a notary, and drew up the
protest there; I don't know if it was a notary or not; he took
me to their lawyer; he took me to Mr. Jones, who sits here; I
guess that is the man; I went there for the purpose of making 45
the protest; the notary drew up a protest; I guess he drew it
up some at the first time, and was to have it all ready when I
came again, or something like that; then I came the second
time and made some objections to the form of the protest, and
then he was to change it, and I was to come in again, and I
didn't come; I went to the Police Station the next day, or the
day but one after; that was when those parties had been
arrested; I believe the "Parker's" crew had been arrested
then; I guess there was more of them than the captain ar-
rested; I don't know how many; I know the captain was
arrested.

I went up with the captain of the "Parker," and the detective who had arrested him, from the Police Station to the

Tombs Court; I went with the captain of the "Parker" and Williams, and all of them, I won't say for certain,—I went up —I forget who was there; I will not swear that when I went from that Police Station Captain Williams was there at all; I think he was, though; I won't say whether I went from the Police Station when I went first to the Tombs Court with the captain of the "Parker;" I know we went there, but I don't 46 remember who it was; I met at the Tombs Court the captain of the "Parker;" that was Captain Swartz. He is dead, I understand; there I made a complaint against Captain Swartz; I can't tell what day that was by memory.

(Paper shown witness, and he examines it. Marked Exhibit "A.")

Q. Is that your signature?

EXHIBIT B.

THE PEOPLE, &c., on the complaint of } *Offence.*
vs.
47 RICHARD SCHWARTZ.

STATE OF NEW YORK,
City and County of New York, ss.:

Hobart Cooper, at the Italian School, Five Points, in said city and county, being duly sworn, deposes and says, that Richard Schwartz, (now present), is captain, and in charge of tug-boat "John N. Parker"; on Saturday the 9th day of October, 1875, deponent was in the canal boat "N. L. Lee" in the "U. S. Grant's" (tug-boat's) tow, bound for New Haven; while oppoisite the Battery, a schooner whose name is unknown to deponent ran unto deponent's boat, said schooner was towed by the "John N. Parker," and the boat deponent was on sunk in about twenty minutes. Deponent's wife and child were drowned; as the schooner struck deponent's boat, deponent called out to the 48 persons in charge of the tug to save deponent's wife and child. The persons in charge of the tug-boat "John N. Parker" paid no attention to deponent's appeal but continued on their course. Deponent charges captain Richard Schwartz, of the tugboat "John N. Parker," with wilfully causing the drowning of deponent's wife and child.

(Signed). H. COOPER.

Sworn to before me, this 11th day of October, 1875.

(Signed). P. G. DUFFY,
Police Justice.

EXHIBIT D.

POLICE COURT, FIRST DISTRICT.

STATE OF NEW YORK,
City and County of New York, ss.:

Hobart Cooper, at the Italian School, Five Points, being duly sworn, deposes and says, that on the 9th day of October, 1875, 49 at the city and county of New York, Charles Williams, (now present), is captain and in charge of the tug-boat "U. S. Grant;" on the 9th day of October, 1875, deponent's canal boat "N. L. Lee," was being towed by said tug "U. S. Grant;" was bound for New Haven, and when opposite the Battery an unknown tug gave one whistle and about three minutes after they gave two whistles; immediately the "Grant" sounded three whistles, I then said to Captain Williams, "we are likely to have a collision," Captain Williams then stated, "I think we will." I ran aboard of my boat to put a fender in, I saw the schooner was likely to run into deponent's boat and thereby injure me. I shouted then to my family to hurry and get out of the cabin. When I got back to the cabin, I took hold of my daughter and jumped on the boat with her that was alongside of us. I then called out to Captain Williams to cut the lines 50 and back and save my family; we came around, I said to Captain Williams, "I have lost all I got," "I could not let the tow go to hell."

Deponent, therefore, charges Captain Williams of the tugboat "U. S. Grant," with wilfully causing the drowning of deponent's wife and child.

H. COOPER.

Sworn to before me, this 14th day of October, 1875.

P. G. DUFFY,
Police Justice.

City and County of New York, ss.: 51

Hobart Cooper, at present residing at the Italian School, at Five Points, being sworn, says, I was Captain of the boat "N. L. Lee," on the 9th day of October, 1875, when the collision took place, which resulted in the drowning of my wife and child.

The boat was loaded on Monday, October 4th, 1875. I left Trenton, New Jersey, on Tuesday, October 5th, midnight. We arrived in New York Harbor on Saturday morning, the 9th October, 1875, and put the boat into dock at the "Stakes" New Jersey shore. The captain of the "Vim" came along with his boat that afternoon and I reported that I was bound for

New Haven. So the "U. S. Grant" took us in tow. There
were four boats in tow. Two on each side of the "Grant." My
boat was the outside boat on the right-hand side. We crossed
the river towards the New York side ; when near the man-of-war,
off the battery, we noticed smoke and a schooner with a
tow-tug towing her. The schooner and tug were going up the
river, when we saw the tug she was on the right hand side. I
43 was in the pilot-house of the tug "Grant." and she attempted
to sheer when the tug "Parker" blew one whistle, the captain
of the "Grant" answered the same. I did not notice any
change in the course of the "Grant ;" the "Parker" blew two
more whistles ;" the "Grant" blew three. The two whistles
meant to go the starboard side ; the three whistles meant danger ;
I was going from the pilot-house of the "Grant" when
the three whistles were blown. I jumped on the "Coalport"
and from there jumped on to the deck of the "Lee," about
where the middle hatch is situated. I immediately called for
my child to call her mother to get out of the cabin, and I
started forward to put a fender out, I saw that I would be likely
to be injured if I did do so ; I returned to the cabin and
taking hold of my daughter, who stood near the hatch as you
come out of the cabin, and jumped with her on the "Coalport,"
44 and as I did so fell on the "Coalport," and as I arose to come
back the line struck me and prevented it. The collision causing
the line to break: the lines which fastened my boat to the
"Coalport" broke immediately ; two of the lines were new ; the
boat was fastened to the "Coalport" by myself and hands on
the tug "Grant ;" when the lines parted my boat went beyond
the schooner and I asked the people on board the tug "Parker"
"for God's sake to save my family." The tug "Parker" was
nearest my boat at the time of the collision ; when I asked the
hands on the "Parker" to save my family they made no reply,
and at the time were alongside of the boat ; I then shouted to
Captain Williams of the "Grant," "for God's sake cut the line
and loosen the boat, and save my family." Captain Williams
said, "I can't let the tow go to hell." The "Grant" then
turned the tow and went up the river. I spoke to the men who
45 were in the small boat from the "Parker" and they spoke to
me, and asked me why I deserted my wife. My wife and child
were in the cabin when I jumped from my boat to the "Coalport."
They came on deck and shouted to me to save them.
If the captain of the "Grant" had cut loose his tow he could
have saved my wife and child, and it would not have put the
tow in danger, as the "Coalport" had an anchor on deck. If
the captain of the "Parker" had let go the schooner she had in
tow, my wife and child could have been saved. There was no
attempt made to lower a small boat from the "Grant." I have
not learned why they did not lower one. They put off a boat
which belonged to the "Coalport," and it went in the direction
where my boat was. I did not go into the small boat as I was
not a good oarsman. It was twenty minutes from the time the

collision took place to the time the light on my boat went out. It was a moonlight night; the tide was ebb at the time of the accident.

Neither of the steam tugs had small boats, except the "Grant," as I know. When we first saw the "Parker" she was below the man-of-war, off the battery. It was about three minutes from the time we first saw the "Parker" up to the time of the collison. 55

Cross-examined:

When we first saw the "Parker" we were nearer the New York shore. I did not see any light on the "Parker." The "Parker" was heading towards the New York shore. She continued on that course. I understand that one signal from the "Parker" meant for the "Grant" to go to the right. The "Grant" immediately answered this by one whistle; at this time they were heading on such a course if they had continued on the same, the collision would have been avoided. It was three minutes after this that the "Parker" sounded two whistles; we were then about in a range with each other. From the time the first whistle was sounded until the second whistle, the "Parker" had changed her course somewhat. The "Parker" was about eight hundred feet away, when the second 56 whistle was sounded. She was on the right hand side of the tow, when the schooner in tow of the "Parker" struck my boat.

I could not say, as to whether the engine of the "Parker" was stopped at this time. I do not know whether the "Grant" altered her course when the "Parker" whistled.

HOBART COOPER.

Sworn to before me, this 21st day of October, 1875.

P. G. DUFFY,
Police Justice.

Hobart Cooper being further cross-examined, October 27th, 1875, says: 57

I did not notice what light the tug "Grant" carried; I could not say as to having side-lights; I cannot say to a head-light I saw the smoke of the tug "Parker" first, not the tug itself; I could not see; I saw the tug before the collision; I do not know whether she carried lights or not; I do not know who was in command of the "Parker." I did not hear any one give orders from the schooner that she had in tow. The first signal of one whistle was given by the "Parker." the "Parker" blew the two whistles first; it was three minutes from the first to the second whistle. I do not know as to whether the "Parker" put off a small boat after the collision; I saw a small boat about thirty minutes after the collision; I do not know where the small boat came from ; the persons I have testified to, were the only ones on board the canal boat.

HOBART COOPER.

Sworn to before me, this 27th day of October, 1875.

P. G. DUFFY.
Police Justice.

58

(Question objected to by counsel for Austin as immaterial.)

(Objection overruled. Said counsel excepts.)

That is my signature. That is the affidavit I made at that time, and I swore to it on the 11th day of October ; I first went to a lawyer about this matter, I think, three or four days before my brother came down ; it was not about the time that the matter of the protest came up—whether I should sign the protest ; that was the next day, they wanted me to sign the protest ; they wanted me to sign the protest next morning.

(Paper offered in evidence.)

59 (Counsel for Austin objects on the ground the same is not proper evidence as to him, and same is immaterial and irrelevant.)

(Objection overruled and paper put in evidence. Marked Exhibit "B.")

I will not state whether I had consulted any counsel in the case before I went to Mr. Jones' office about the protest the first time or not ; I afterwards made a complaint against captain Williams, in command of the "Grant ;" I swore to that affidavit against captain Williams ; I was afterwards examined before the Police Justice, Justice Duffy.

(Paper shown.)

That is my signature. (Another paper shown.)

Q. Is that paper signed by you, and is it your examination before Police Justice Duffy ?

60 (Question objected to by counsel for Austin as immaterial and irrelevant.)

(Objection overruled. Exception. Paper in case Exhibit "D.")

A. That is my signature also ; my signature is to both of them. When I was examined before Mr. Justice Duffy, I was not examined as to all the circumstances of the collision ; there were some questions put to me about the collision : I made a statement to them of what happened ; I did not make a charge against captain Williams ; I didn't understand so ; all I made was a statement of what happened ; the paper was read over to me there ; I understood that they were going to have a trial to see who was to blame—to sift the matter; so far as the questions were put to me, I swore to what I understood to be the facts.

I was also examined before the coroner's jury at the inquest—questions were put there about the collision; I answered those questions; so far as I knew, I meant to answer those truly.

I had been captain of this boat I guess about 6 years—6 or 7 61 years, somewheres near that; my wife had been running on the boat with me during all that time; we had been running to Buffalo, Oswego, New Haven, Hartford, New London, Baltimore, Philadelphia, &c.

I had somewheres over 240 gross tons of coal on my boat—240 and something, I believe; our hatches were on; I did not have any life-preservers on my boat, had fenders; when we were going over from Jersey City to this side, I went up into the pilot-house of the "Grant;" I went there in the pilot-house soon after we left the Stakes; I think it was longer than half an hour before the collision; I think it took a little longer to get across the river; captain Williams and I were in the pilot-house; just before the collision happened, Mr. Hicks came in just as I jumped out; I stood there talking with captain Williams as we were going down the river; I believe I did lend a hand at the 62 wheel once; I was looking all over to see what was in the river; the distance between the "Minnesota" and this Albany tow, I shouldn't think was over 150 yards—about 150 yards; I shouldn't think it was any more than that.

My boat is 17 feet 5 inches wide, I believe; two of the other boats were about the same width; I believe one of them was under—one of them was 20 or 22 feet; I did not know what the other two boats on the other side were loaded with; I knew the captain of them; I believe on one boat there was a boy, on the other boats there was a captain, but nobody else.

I believe when I first saw the "Parker" we had not passed the stern of the Albany tow—we were not by the Albany tow when the collison happened; the way I know about the Albany tow is by being told, and that is the only way; I know about how many boats were in the tow. I didn't pay any particular 63 attention to see how many boats there were; I was looking ahead in the way I say.

This schooner, when I first saw it, was down below a considerable piece off when we first saw the steam; when I saw the steam I knew it was a tug; I did not see any lights on her until we got close to her; I then noticed a light on her flagstaff; I think that was the light on the schooner; it may have been on the "Parker," and when I looked through it seemed to be on her; this light—I won't be certain whether it was on the "Parker" or the schooner; I may have seen two, and got them on a line with each other.

I have not told any fact to-day with relation to that collision

—that is to say, what was done at the time—which I did not know that night; I have told this story about the collision—have been asked about it several different times; Mr. Millbank asked me about it; I talked with twenty or thirty about it; I understood that the first whistle which was answered by the single whistle, was for each vessel to go to the right; that meant that the "Parker" was going to change her course; I 64 first thought there was danger of a collision about the time the "Grant" blew her two whistles; I swear that the captain of the "Grant" blew two whistles in answer to the "Parker's" —two, instead of blowing three; he blowed two, then he blowed three right after.

(The counsel for defendant, "Eastern line," here offered in evidence the complaint of the witness, made at the Police Court, to contradict and impeach him.)

(The counsel for defendant, Austin, objected to the same.)

(Objection overruled and paper admitted in evidence. Counsel for defendant, Austin, excepted.)

The paper was then read in evidence, and is as follows:

65

POLICE COURT—FIRST DISTRICT.

STATE OF NEW YORK,
City and County of New York, ss:

Hobart Cooper, at the Italian School, Five Points, being duly sworn, deposes and says that on the 9th of October, 1875, at the city and county of New York, Charles Williams (now present) is captain, and in charge of the tug boat "U. S. Grant;" on the 9th day of October, 1875, deponent's canal boat, "N. L. Lee," was being towed by said tug, "U. S. Grant;" was bound for New Haven, and, when opposite the Battery, an unknown tug gave one whistle, and about three minutes after they gave 66 two whistles; immediately the "Grant" sounded three whistles; I then said to Captain Williams, we are likely to have a collision; Captain Williams then stated, "I think we will;" I ran aboard of my boat to put a fender in; I saw the schooner was likely to run into deponent's boat, and thereby injure me; I shouted, then, to my family to hurry and get out of the cabin; when I got back to the cabin, I took hold of my daughter and jumped on the boat with her that was alongside of us; I then called out to Captain Williams to cut the lines and back, and save my family; we came around; I said to Captain Williams, "I have lost all I got; I could not let the tow go to hell."

Deponent therefore charges Captain Williams, of the tug-boat "U. S. Grant," with wiifully causing the drowning of deponent's wife and child.

H. COOPER.

Sworn to before me, this 14th day of October, 1875.

P. G. DUFFY,
Police Justice.

Q. Why do you swear to that, "immediately the 'Grant' sounded three whistles" if it is true that she sounded two,—can you make any explanation about that, sir? 67

A. Well, I don't know that I can; they were having me up to the tombs every day, and they said they would do something for me; I wanted to find my folks, and I thought if they let me away, I could likely find my folks; I didn't care what I signed, I said, if they would only get my folks; I wanted some way, so I could get help to get my family. I had my daughter, and she had nothing to eat, wandering around, and was willing to sign almost anything—whatever they wrote I signed.

Q. You mean to say that you would sign anything for Judge Duffy?

A. No, sir, I do not.

Q. That is all the explanation? 68

A. I didn't notice how they had it; that is all; I don't remember.

Q. Now, I refer to your examination, you have stated that you were examined afterwards, and what I hold in my hand is sworn to on the 21st, a week later. Now, on this examination, I read from this affidavit of yours, as follows: "when we neared the man-of-war off the battery, we noticed the smoke of a schooner with a tug towing her; the schooner and tug were going up the river; when we saw the tug, she was on the right hand side; I was in the pilot-house of the tug "Grant;" she turned to the shore; when the tug "Parker" blowed one whistle, the captain of the "Grant" answered the same; I didn't notice any change in the course of the "Grant;" the "Parker blew two more whistles, and the "Grant" blew *three* whistles; the two whistles meant to go so the starboard side, and three whistles meant danger; I was going from the pilot-house of the "Grant" when the three whistles were blown." Have you any explanation to give why you didn't then swear that the "Grant" blew two whistles? 69

A. I don't know as I can; I don't know now if they asked me.

Well, I meant to have it that she blowed two, and then blowed three; I suppose they didn't ask me if she blowed two.

I was examined before the coroner, at the inquest; the foreman of the jury and the coroner put the questions to me there.

Q. Now, were you not asked this question: "you are not sure who gave the first signal," and didn't you answer "no; I think it was the "Parker," but I wouldn't be certain.

A. No; I wouldn't be certain.

Q. Do you remember any questions being put te you about the whistles?

A. Yes; they asked me about them.

Q. Wasn't the question put to you, "what was the signal?" and didn't you answer, "I believe there was one whistle."

A. Yes; I told them there was one whistle.

70 Q. And then wasn't the question put to you, "Did the Captain of the "Grant" answer that whistle?

A. I told them he did.

Q. Did you answer, "I think he did; they answered one another?"

A. Yes, sir.

Q. Were you not asked this question, "Who gave the two signals," and you answered, "I believe the "Parker;" I think it was the "Parker" gave the two whistles."

A. Yes, sir.

Q. Were you asked this, "What followed after,—were there any more signals given?"—and did you answer, "After that the Captain of the "Grant" gave three"—did you make that answer?

A. I gave that answer, that the Captain of the "Grant" gave
71 two and then three.

Q. Do you swear that you said that the Captain of the "Grant" gave *two*, and then *three*—do you mean you did say it?

A. That is what I meant.

Q. Do you swear that you did say it?

A. I would not say whether I did say it or not.

Q. Were you asked this question, "Did he answer the two whistles given by the "Parker," and did you answer, "I think he gave three instead of two; he said there was danger."

A. No, that was wrong.

Q. Did you swear that was the way, or did you swear you didn't say that then?

A. Well, I will swear that I didn't mean to say any such thing.

72 Q. I am asking what you did?

A. No, sir, I didn't swear to any such thing as that.

Q. Was this question put to you, "He gave three whistles for the two, I think; it was three, I think; I won't be certain; I think it was three he answered for the two."

A. I didn't understand him to ask that; I understood him to ask this question; I understood him to ask me if there were two and then three, and I said yes; I wouldn't say whether I had a conversation with Captain Menges in relation to the matter or not.

I had with me a man named "Peter;" I couldn't say what his other name was; that is the man (indicating); I had no talk with him; he stood in a crowd; they were asking me about the circumstances, and I told them; I had that conversation in

South Street ; I think it was a couple of days after the occurrence ; I don't think it was longer—somewheres near the occasion ; I won't say for certain how long it was.

Q. Now, sir, didn't you say to Captain Menges in that conversation, that you found no fault with Captain Williams ?

A. No, sir, I did not say any such thing as that ; I will swear that I said, I didn't know who was to blame.

Q. Now I repeat my question : Will you swear you didn't 73
say in effect that you found no fault with Captain Williams, or the "Grant ?"

A. No, sir, I never said so.

Q. Nothing to that effect ?

A. No, sir.

Q. Didn't you, in that conversation with Captain "Peter," say to Captain Peter that Charley Williams was not to blame ?"

A. No, sir.

There was, I believe, Captain "Peter," and some other men stood in number 12, and they asked me if I wouldn't do a great deal better to settle the thing up and let the "Gamecock" help me out ; I said no, I didn't know, and they asked me what difference passed between us, and I said there ain't nothing ever passed between us ; Mr. Milbank has always used me well, and
he was sorry for me, and he would do anything for me, and he 74
didn't know as they was to blame ; and says I to Mr. Milbank, "Charley is to blame for drowning my wife and child ; he could save them if he had a mind to ; and Mr. Coffin he wanted me to sign something that they wasn't to blame for the thing, but I did not do it ; I says I don't know who's to blame ; I don't either blame Charles Williams, captain of the "Grant," nor anybody else ; I don't blame nobody—I mean the captain of the "Grant."

I mean to say that in that talk with captain Menges, I didn't talk over the circumstances at all ; I said that the boat was sunk, and my wife and child drowned ; I did not tell him how it happened ; I didn't have time ; I only stood there a little while talking.

Q. Now, Mr. Cooper, when you had a talk with Mr. Coffin,
when you said Mr. Coffin took down something or other, did 75
not you say to Mr. Coffin that the "Parker" blew one whistle as a signal to the "Grant" and her tow to pass to the right, and that this signal was promptly answered by the captain of the "Grant ;" did you say that to him—to Mr. Coffin ?

A. No, sir ; I didn't say that.

Q. Now, didn't he ask you what whistles were given ?

A. Yes, sir.

Q. Did you tell him then that the "Parker" blew one whistle ?

A. Yes, sir.

Q. Did not you tell him that was answered by the "Grant" with one whistle ?

A. Yes, sir.

Q. Did you tell him then, that as the two tows were nearing one another, after about three minutes had elapsed, the tug "Parker" gave a signal of two blows on her whistle?

A. Yes, sir.

Q. Did you tell him that signaled to the captain of the "Grant," a change of course on the part of the "Parker?"

A. I don't know as I said them words; I said about the 76 whistles, and he put that in himself.

Q. Did you then tell him that the captain of the "Grant" blew three whistles, and commenced to back?

A. No; I said the captain of the "Grant" blew two whistles.

I say that when I was before the notary, the protest was read over to me, and I made some objections; I don't remember that it was marked with a blue pencil, as I objected to it; I objected, and they wanted me to sign it, and I said I couldn't sign it, and didn't do it.

Q. Now, do you remember that this was read to you, "that the 'Parker' gave two blasts of her whistle as an indication that she then intended to pass on the starboard hand of the 'Grant,' then rang two, and that the 'Grant' immediately sounded three blasts, reversed her engine, stopped and backed;" 77 do you remember that being read to you?

A. Yes, sir; I refused to sign all of that; I said I wouldn't sign a protest like that; I would not sign that one; I said I would not sign it in that way—that if they got the protest right, I would sign it; I was to come in again to have it signed; when I left I agreed to come in and sign it. I remember having a talk with Mr. Milbank about this matter; I did not tell Mr. Milbank that I found no fault with captain Charley; I did not tell Mr. Coffin at any time that I found no fault with captain Charley; I had the talk with Mr. Milbank two or three days after—I won't be certain, may be the next day; I can't say how soon after; it was in his private office; the first talk I had was with Mr. Gladwish, and Mr. Milbank said he was sorry for me.

I say I had been towed by the "Grant" before, a number of 78 times; I went down the Sound with her when she had sixteen boats; she put me through; she went with the tide and towed us; I think that she towed sixteen; on other occasions she had towed about two, three, four and twenty light boats; I have seen her when she had seven or eight loaded; she could take about six to nine loaded boats on the Sound; I don't hardly think she could handle them in the East River; she couldn't handle them as well in the river as she could in the Sound; it is easier to tow than to shove the water ahead of them.

I saw some one on board of the "Grant" before the collision; I saw three men working aside of her and the stern of the "Coalport," putting in some fenders; they were trying to get them in before we crossed the river; just as soon as the first whistle was blown by Capt. Williams. I kind of looked back, and they were there then; I didn't see them after.

There were two deck hands; I knew them by sight, that is, I saw them, you know; I didn't start to leave the pilot house until I thought there was danger; I can't say for certain how fast the ebb tide runs there—two miles or two and a half an hour.

I believe this "Parker," with this schooner in tow, was going 79
to put the schooner into this Albany tow—I understood so; I didn't notice any bell ring in the pilot house of the "Grant;" this boat was mine when I got her paid for; I didn't claim that I had any loss on the boat; suit has been brought by my brother for that.

When the "Gran't" blew the signal, I don't think the Albany tow was over 40 feet away on our left; when the first signal was blown, the pilot of the "Grant" answered it, and put his wheel over to the right, and I left afterwards; that was after the one whistle; he blew the two and put his wheel over the other way, then I jumped out.

I think the outside boat was only about 40 feet from the Albany tow at the time of the collision.

When I first saw the light of the "Parker" we were about abreast of the "McDonald," the steamer of the Albany tow, 80
and pretty close to her—likely we was 200 yards west of the steamer; we hadn't got down to it; that was when the first whistle was blown; the Albany tow wasn't down then; when she began to whistle we were about 200 yards from the tow; we sagged in beside the Jersey City Ferry, ran pretty close—I don't believe over forty feet from the Albany tow on a line.

I want to be understood as saying that, as we went down by the Albany tow, the outside boat in tow of the "Grant" wasn't more than forty feet from the Albany tow; my boat was likely 150 yards to the east of the "Minnesota" at the time of the collision; there was likely 300 yards between the Albany tow and the "Minnesota"—I should think so.

It was a light night—very light—so that we could see plainly; you could read the "Austin's" tow, but I didn't happen to look; I had no control of the "Grant;" we had to go wher- 81
ever she took us.

Cross examined by Mr. Campbell:

The stakes is the place where boats stop to be taken out in the regular tow; we left there a little after eleven o'clock, and the tow was formed there; when we left we went about across the river until we arrived just above the Jersey City Ferry; then the captain of the "Grant" blew for the ferry, and changed his course down the stream; then we went directly down the stream, close to the Albany tow, went directly down the stream; I couldn't say exactly how near we had come to the New York side then; we were coming so we were about 40 feet off from the Albany tow; the Albany tow was on our left as we were going down.

When I first saw the "Parker" she was below; I could see the steam going below; she was working ahead on the schooner, I believe; she then took the schooner in tow; when she had taken the schooner in tow we were going directly down the river, and she was coming directly up, head and head; I was 82 to work at the wheel of the "Grant;" we were likely 250 or 200 yards from the "Parker;" I couldn't say exactly when the first whistle was sounded—I was not at the wheel; I then stood right back of the wheel, looking right out of the pilot house; when the "Parker" sounded the two whistles I stood forward and looked out of the window; I spoke to Williams just after the two whistles; I said, "We are going to have a collision;" he said, "I guess we be;" then he blew three whistles; during this time the course was not changed; he tried to change it, but couldn't.

I say there was no lookout; the name of the mate was Hicks; I didn't get close enough to him that night to notice whether he was drunk or not; he had been drinking; I couldn't say how much; I wasn't close enough to notice; he was somewhat intoxicated; I do not know what his duty was on board; at the 83 time when I helped at the wheel he was putting on fenders between the "Grant" and the "Coalport;" he came into the pilot house, and when he came in I went out; I came to assist, not by the invitation of Captain Williams, but as a general thing we men generally go up there, and I offered to, and he didn't decline my assistance.

The schooner struck about three feet from the stem of my boat; the width of the boat is 17 feet; the stem is about a foot thick; there was a shearing of about 8 feet; it only lacked about 8 feet to the middle; there were three boats of 17 feet, and I guess the "Coalport" is 20; that was 71 feet, and the tug must be 22 or 23 feet; if those boats had turned to the right in order to avoid the collision, they would have had to turn a good ways to avoid the collision that way, and if they had turned to the left 3 feet, they would have avoided the collision.

84 I say that the first whistle I heard was by the "Parker," one whistle; the "Grant" answered that by one whistle; the "Parker" immediately blew two whistles, and the "Grant" answered that by two; then the "Grant" followed it up by blowing three; that was the way the whistles was blown.

I have not any recollection as to whether those statements in the Police Court were read over to me or not; I was willing to sign almost anything then; I made the first statement the next day after my wife and child had been drowned; it was two or three days after that, that I made the statement as to Williams; I think I was under great excitement in reference to the death of my wife and child; I applied to the authorities for the purpose of trying to raise the boat; I went to everybody to get them to raise to the boat, to see if I could find them—everybody that I supposed could have any influence; I suppose Austin was the owner of this tow.

Cross-examined by Mr. Benedict:

I can't say whether those affidavits that I swore to in the Police Court were read over to me or not; I will not swear that they were or were not.

I have been a navigator a good many years; I know what 85 effect a helm has on a boat; if the helm of a boat is put to port, that will change her head; I know of a reason why putting the helm of the "Grant" to port did not have this result—she was sheered a little the other way; we had it port just enough to break the sheer; before he did anything more he got the two whistles and sheered her; she was going on when he sheered her; her wheel had a tendency to swing her; if he had left the helm clear over, she would have gone round; if he had gone on, and hadn't changed her that time, because we only cleared about 4 feet—I mean the time he sheered her wheel back again—if he had held to port all the time, she would have cleared that side.

I don't know where the fault was; I say if he kept her wheel over, she would carry them in—sheer over to the left all the while; she would have cleared; I say that when the "Parker" 86 blew one whistle for him to put his wheel starboard, the way was so clear that she might have passed that side by putting his wheel to port; I don't know what starboard is; it would have been good seamanship when the "Parker" blew one whistle to have put the "Grant's" wheel to the left; it would carry it over that way (indicating). If he put his wheel left, it would send her ahead—carry us in that way (illustrating), and we would likely have cleared; I supposed that would have helped her. He eased up when he got the two whistle.

After the collision, the captain of the "Grant" ordered his crew to put out the boat on the "Grant"; that boat was on the deck of the "Grant"; instead of doing that, they took a boat which was on the "Coalport," which was nearer to the water than the boat on the "Grant"; it was a lighter boat; I got into it before the oars came; a man on the "Coalport" got the oars; 87 they went to look for them, and they wasn't there, and he had to rush up for the key, and go to the bow cabin; that was the captain of the tow that did that.

The light was in my boat when the boat got into the water; we drifted down a considerable distance then; we had got by the stern of the Albany tow; I didn't notice how far below; we could look across and see the land between us—the shore; the stern of the Albany tow was up above us; we got down to the edge of the North River pretty near.

I guess this man would have to row five or six hundred feet from the "Coalport" to my boat; he must have had to row up four or five lengths of a canal boat; the boat wouldn't hold two; it was a little small boat; it wouldn't hold one man safely; they were twelve minutes from the time of the collision, getting out the oars; the boat was full of old rubbish, and we had to take that out; then went to the stern for the oars, and looked in another place, and found out they were in the cabin down forward, and had to go back and get the key and unlock that

Mr. Coffin said I had better make a statement to clear myself;
88 I did not mean to make it to clear the Eastern line, and throw it on to Austin's. He did not say he wanted me to throw the blame on Austin's boat. He wanted me to make the protest so as to clear them (The Eastern Transportation Line). My wife's maiden name was Mary Ann Cooper; she is the same person on whose estate I have taken the administration.

The way I came to go to the Police Station was, that I and my daughter were wandering through the streets; we were going around to see if we couldn't find a boat, and we met a policeman, and he asked some questions, and said we had better go the Police Station and make a charge; I said we had no charge to make, and he said we had better go, and we went with him and told what happened; I went that night to the Station; I saw a man sitting behind a desk; I don't know who he was; he wrote something; I don't know what he did do; I
89 didn't pay much attention; I and my daughter at that time did not know that my wife and daughter were drowned; we supposed they were saved—and that was the object of our going around that night to get a boat to ascertain.

I first saw Mr. Coffin after that on Monday morning; this occurred on Saturday night; I saw Mr. Coffin in the Gamecock Line's office; that is the time he proposed to get up this statement, that I refused to sign; I would not say, whether or not, it was the same day he took me over to Mr. Jones; Mr. Jones was in the office of Mr. Benedict, one of his counsel, I believe, and then this paper was made up—this statement, they called a protest, for me to sign; I agreed to come back to the notary's office, only an insurance agent, that I saw, told me I had better make a protest; I said I was going to make one, that Mr. Coffin was going to make it up, and he says, you had better
90 make it, so he sat down and wrote a protest that the boat "Lee" had sunk so and so, and my wife and child drowned, and I signed it.

The "Grant" had a boat right on the side of her, a nice big boat hanging there; they could have saved them without trouble; all they had to do was to let that boat down, and they could have rowed right over; they could have dropped that into the water; all they had to do was to let it go and let us back right up; this "Coalport" was attached to the tug on the same side, but part of her stern was away back here, and if they had dropped her, she would have gone right into the water. (Witness illustrates). They might have put it into the water without taking it across the canal or towboat; all they had to do, was to let it go right off the davits.

At the time that one whistle was given, the "Grant" stood in somewhat towards the Albany tow; if the "Grant" had kept straight on her course, and the other party, the "Parker," had turned to the left, there would not have been any difficulty in clearing; from the time of the first whistle until the two whistles were given, the "Grant" had not got any further from the Albany tow than she was before; when she blew the whistle, she was a little sheered, and that straightened her out; 91
she had not lost her headway; she was working her engine pretty rapidly when we were coming down the river; I didn't hear any bells.

Just as we got in range of the bow of the "Minnesota" we saw this smoke; then the ferry-boat kind of hid the smoke again you know, as we had to go around her stern. She was coming up stream, going up the river; the captain blew to have her go under his stern and she wouldn't do it, and he went under her stern; we saw the tow all the while from the time we were coming across the river.

There was between the boats likely 800 or 900 yards when I first saw the smoke; well, when they came in range then they blowed the whistles; we had nearer one another, and the distance between the boats wasn't so great; I don't think we could have been over five or six hundred yards off at the first 92
whistle; he was coming with a pretty good tide.

Mr. Milbank is one of the Eastern Transportation Company; he belonged in the office; Captain Peter is not another one; he has got a boat and tows on the line—that is all.

Re-direct:

My age is 42; the steamer that had the Albany tow was the "McDonald;" I don't know how long she is; I never noticed her; she is a good deal longer than a canal boat; the hawser she had those boats by, I shouldn't think, was over a hundred feet, or 120 feet long; it was a short hawser.

The sixty-six boats made eleven tiers I believe; the boats were about six or eight feet apart in the tiers, and about, in the neighborhood of 97½ feet long; allowing the "McDonald 200, and the hawser 120, that is 320, eleven tiers at 97 feet, and the 93
distance between them makes over a thousand feet; that makes something over 1,200 feet for the tow.

My boat was about 18 or 20 inches out of the water in the middle, and over three feet forward; I don't know how long the "Grant" was; I think she is longer than a canal boat; I don't know; I said that the mate of the "Grant" had been drinking; I know he had been drinking, because I was close to him; I did not see him drink.

Re-cross:

By Mr. B.: I thought the mate had been drinking, because he liked to let us adrift when he hitched us on to the tow, and

I saw the way he handled himself. I stood aside of him and smelt his breath, when we were making the boat fast to the tow; nothing else only the way he acted that night; he didn't act as he generally acted; if he had been drinking, he wouldn't like to have set the boat adrift; I noticed nothing else. I don't know that I testified anything before the coroner's inquest about that mate having been drunk.

94 I was asked if the captain had been drinking, and I said I didn't know as he had; I said nothing whatever about the mate: it was not asked me; I was examined in the suit for the loss of the boat.

Q. Do you remember my asking you on that examination this question: "When the first whistles were blown, how were the vessels with reference to being on a line?"

A. I said they were pretty near up and down the river on a line, not all the time.

Q. Do you remember testifying before the Police Judge that the time was three minutes from the first to the second whistles?

A. No, I don't remember as I did.

Q. If you did say that, was that your best judgment at the time when you were examined?

A. I don't know as I said so.

95 Q. Well, but if you did?

A. Well, I don't know.

Q. How much do you say that it was, three minutes from the first whistle to the second whistles?

A. Well, I didn't understand them to ask me any such question as that.

Q. Well, I ask you now?

A. I didn't understand so.

Q. What do you understand now?

The Court:—What is your recollection now of the fact as to the length of time?

A. It couldn't have been that long from the first whistle to the last. It was about three minutes from the time we first saw her until the collision. I should think that it was about three 96 minutes from the first time I saw the smoke.

(Extract read from the first deposition by him made on the 14th, as follows:) "When opposite the Battery an unknown tug gave one whistle, and about three minutes after gave two whistles." (Extract read from the deposition sworn to on the 27th, as follows:) "The 'Parker' blew two whistles; it was about three minutes from the first to the second whistle."

Q. Have you any explanation to give as to why you should vary your testimony now from what it was then?

A. Well, sir, I didn't understand them to ask me any such question.

Q. I read now from the deposition sworn to on the 21st: "I did not see any light on the "Parker;" the "Parker" was heading towards the New York shore." How do you say now?

A. I didn't see any head-lights on the "Parker" at all.

When I first saw her, she was heading to the New York shore; I do not know about how the speed of the "Parker" compared with the speed of the "Grant;" I didn't notice whether the vessels seemed to be coming at same rate of speed; they came together pretty rapidly. 97

I did not put up any light on my boat.

Q. Is it usual when you are towed that way to have a light?

(Question objected to by Counsel for defendant Austin. Objection overruled. Exception.)

A. Not when we tow alongside, unless there is a boat on the outside; it is not usual when we are towed that way to have a light—not when we tow alongside, unless with a light on the outside; sometimes it is usual for the tug, if they ask you, to have one light on the outside corner of the bow; I have seen it done.

Q. Why didn't you do it that night?

A. Well, I wasn't asked.

When the first steam was seen from the "Parker," we had not got down even with the "McDonald;" we were above the 98 "McDonald;" must have been; when the first whistle was blown from the "Parker;" I think we must have been above the "McDonald;" I think the "McDonald" was working in shore a little, her tow was swung out; she was ranged inside her tow; I think we were 40 feet west of the line of the tow.

I remember having a conversation with Daniel McWilliams; I had a conversation with him next morning; this collision took place on Saturday night; I mean on Sunday morning.

Q. Well, in that conversation didn't you tell him you found no fault with captain "Charley?"

A. No, sir; I did not.

I did not say in substance he was not to blame; I remember having a conversation then with Mr. Gladwish about the matter; I did not tell him in that conversation that I didn't consider that Captain Williams was to blame—nothing like that; 99 I remember having a talk with Mr. Coffin just before I went up to the Police Court, and gave my testimony in relation to Captain Williams' case; I do not remember saying to Mr. Coffin upon that occasion that I had told my daughter to say that the time after the collision until the boat sank was about twenty minutes; I didn't say that nor anything like that to him.

I myself took hold of the boat on the "Coalport," and got it into the water; I wouldn't say how many helped me; two or three men around; two of us, I believe, the captain's son and myself; I worked as fast as I could.

Q. Wasn't that the reason why you all took that boat, because you thought you could get that over sooner than the other? Now, speak fairly—wasn't that the reason?

A. Well, I suppose they thought they could get that boat over quicker, because it was a very small boat; I supposed we would get that boat, and the captain would get the "Grant's" over that the captain ordered; I supposed they were getting the other while we were getting this one.

I did not know who the man was that went in the boat; I supposed he was one of the crew of the "Grant;" I first got 100 into the boat; I didn't look to see whether they were getting the "Grant's" boat over then.

Re-cross Exam. by Mr. Campbell:

It was my boat that the mate let go making up the tow; he didn't get the turn forward on the cleet with the line; I don't know why, only he undertook to get the turn around the cleet, and couldn't, for some cause or other; if he had been all right, I think he could have got the line on the cleet; I stood in the pilot-house with Capt. Williams while the boats were coming from the "Stakes."

Re-Direct Exam.:

My boat could carry 270 tons about that time; the bowsprit 101 of the schooner came over my deck; my boat was about three feet out of the water forward.

I saw the boat after it was raised; she lay in the water three months; it was raised on the Jersey Flats, and there they found the bodies of my wife and daughter in the cabin.

Mr. Gladwish, I suppose, is one of the firm of the Eastern Towing Company; I saw him next morning after the collision; the collision occurred on Saturday night; I saw him on Sunday morning in the private office of the Company with Mr. Milbank; I went there to the office to see if they had found out anything —whether my wife and daughter were drowned or saved, I did not know then; I went up stairs in Mr. Milbank's room, and Mr. Milbank said he was very sorry for me, and anything he could do for me he would; Mr. Gladwish came in, and he says: "Mr. Gladwish, Captain Cooper has had very bad luck;" 102 "yes," Mr. Gladwish says, "we must be an insurance company," or had a right to become an insurance company for everybody that was damaged a few dollars;" well, I didn't say no more; I felt hard at what he said; I went out and went down stairs; that was all the conversation that happened there at that time; soon after I went up in the office again, and Mr. Gladwish was there; he wasn't there first; I went to see if there was a letter for me, and Mr. Gladwish came in and asked me why I had Captain Williams arrested; I said I hadn't had him arrested; says I, "the city has done it:" he says, "you have; you have reported that Captain Williams was drunk;" says I, "I have not reported any such thing;" and he says, "Yes, you have;" I said no, for when I was coming down by the Trinity Building they asked me, and I said I didn't know;

he says, "you have reported it," and I said I hadn't; and then he says, "we will give you all the law you want, if that is what you want;" "well," says I, "I want no law about it, and I shan't ask you to do any more about it;" he says, "if you had signed the paper, we would have Williams out;" I said I hadn't done it, and he said I lied—I lied, that I had; and I said that he nor anybody else could say that I lied, and he said he would break my face with his umbrella; he raised his umbrella 103
to strike me; he raised it, and McWilliams and Johnson, I suppose, thought the easiest way was to break my neck, so one grabbed me on each side and shoved me down the stairs. Before this, Mr. Coffin had written a statement and asked me to sign it, and I had refused to sign it.

I then had another conversation with McWilliams on Sunday morning, me and a man named Biggio, down to the dock; I saw him about 11 o'clock, or so; I met Mr. Williams on the dock, and he says, "you had bad luck;" says I; "yes, I have—yes," says I, "you have done all you could to me;" I said they had done all they could to me, now before Mr. Biggio; he was with me when the conversation happened between McWilliams and me.

After the collision, the "Grant" turned round and went up stream again; then we came round to Pier No. 2, East River, 104
and lay there; I and my daughter came off from the tug-boat

Re-cross examination by Mr. Campbell:

My wife helped me sometimes when I was coming through the canal; at this time she had nothing to do with navigating the boat; she assisted in my household affairs; the captain of the "Grant" was Charles Williams; McWilliams had nothing to do with the boat, he is a man in the office.

Re-cross examination by Mr. Benedict:

I have spoken of a time when I had a conversation with Mr. Gladwish; that was after Capt. Williams had been arrested; Mr. Johnston and Mr. McWilliams were present when we were talking; no one else but those three; I believe Mr. Coffin came 105
in soon after; he came in about the time that Mr. Gladwish raised his umbrella to break my face; this conversation was in their office; it is up a flight of stairs; I said I had a conversation with McWilliams on Sunday morning, in the presence of Mr. Biggio; he is a laboring man in New York; that was on the dock; the Gamecock Dock, in Jersey City; Mr. Biggio was in the Italian Consul's office, I believe; he was with me—he went there with me at the time; on Monday morning I had a conversation; Mr. Millbank was present at that conversation; I believe not any one else; that took place in their private office up stairs, in the same room.

I had one fender that was 12 inches through, about three feet, or two and a-half long; it was round, a rope hitched on to it ; there were plenty of ropes about my deck ; we had three ropes that we were not using.

Jennie Brown, sworn :

Direct Exam ;

I am 36 years old ; I reside in Elmira ; on the night of the
106 9th of October, 1875, we were lying off the Battery in the "McDonald" tow ; we were going to Albany ; I was on the "Sherman and Louis ;" my husband is captain of that boat ; I think our boat was in the seventh tier, second from the outside ; there was one boat outside of us on the left hand side, as we went up the river ; it was between the hours of 11 and 12 o'clock ; I sat in my cabin sewing ; I heard a whistle blow ; I heard it answered ; then I heard two whistles, and that was answered ; then our steersman came to the cabin, and he says, "Come up here quick, we are going to have a collision ; and immediately I heard three whistles ; I dropped my work, and ran on deck just as the two boats came together—they were then about two lengths of a canal boat from me. I think it was ahead of of us, up the river ; then I heard them scream ; I saw Mrs. Cooper come on deck, and go towards the bow of the boat ; she
107 turned round, walked back, got her little girl, and stood there screaming for help ; they were then cut away from the tow ; the "Lee" at this time lay rather cross-ways of the river, and not exactly either ; I heard the little girl scream, "For God sake, father, save me ;" I heard Mrs. Cooper say, "Save me, save me," and I heard Mr. Cooper, or a gentleman on the boat, say, "I will save you if possible," and I heard Mr. Cooper say "Charley, for God's sake cut your tow loose, and save my family," and he said, "I can't let my tow go to hell for you nor your family ;" I watched the sinking boat from that time until she went down ; when she went down, she went down right by the side of us, with her stern rather towards us, beside the boat I was standing on ; the stern of the "Lee" was distant from the boat on which I was when she went down about twice the width of a canal boat ; from the time of the
108 collision until the boat sank was full twenty minutes ; the boat on which I stood was distant from the "Lee" about twice the length of a canal boat, when they struck ; when sunk, she was about the width of a canal boat from her.

That night it was just as light as day ; a more beautiful night I never saw ; I could see objects at quite a distance ; I noticed the name of the boat ; I told my folks at the time, it was the "Lee ;" I read the name on the stern ; I could see to read the advertisement on the other side of the river—the hand-bills ; I came on deck just as the two boats came together, about the width of a canal boat apart ; a canal boat is seventeen feet and a half wide ; I did not know Mr. Cooper at this time ; I never saw him or knew who he was until a few days before his wife was taken out of her coffin ; I knew neither him nor his wife.

Cross-examined by Mr. Benedict:

I was present at the Coroner's inquest; I do not remember who put the questions to me there; I testified at that time on that examination that I was called out from the cabin by my steersman, and that he told me there was a boat sinking, and there was a woman and a child on it; that was why he called me out of the cabin; I did not testify on that examination that I heard any whistles at all; when I went on deck, I went on 109 the outside boat; when I came on deck, this canal boat was not abreast of us; she was about two lengths or a length and a half, ahead or astern of us, I won't say which; I don't know which way, for I didn't notice whether I was looking towards the bow or the stern; she was two boat lengths away from me.

When I came up on deck out of the cabin, I looked rather sideways; the door opens right forward, but the tow was going to the left of us, and the crowd of people were going to the left of my hatch; the people on the boats were going to the left; when I came on deck and looked around, I looked to the left to see the boat; I looked to the left of me as I came out of my hatch; I came out facing the bows of my boat; when I looked to the left, I saw this boat two boat's lengths ahead of me; when the boat sank, she was right abreast of us, I then stood 110 on the outer boat.

I said at the Coroner's inquest that I heard them begging for help; I heard the screams for help; I don't remember whether I said anything about hearing anything said between Captain Cooper and the Captain of the tug; I do not remember looking over towards the New York shore any of this time so as to know whether our tow was in motion.

Re-Direct Examination:

From the blowing of the first whistle to the blowing of the three, I don't think more than a minute, or two minutes, at the outside elapsed; I don't know as it was that long; from the blowing of the one whistle until the boat struck wasn't certainly more than two or three minutes at the outside.

Re-Cross Examination by Mr. Benedict: 111

I want to ask this one question: Did you testify before the Coroner's Jury as follows: "I was in the cabin sewing, and I heard a report like a gun and a woman scream; at the same time our steersman stepped to the cabin and said: 'Mrs. Brown, come up quick; there is a boat going down, and a woman on board;' I ran out the cabin on to the next boat, and stood to the left alongside, and saw this boat going down and a woman on the hatch screaming"—Did you so testify?

Q. Yes, sir.

Clayton Brown sworn:

Direct Examination:

My name is Clayton Brown; I reside in Elmira; my occupation is boatman; I was engaged in that occupation in Oct. '75; on the night of the 9th of Oct. I was going up the river in Jerry Austin's tow; I am the captain of the canal boat, "Sherman and Louis," and was then; between 11 and 12 o'clock that
112 night we laid off about Pier 1 or 2 North River; I was at that time in the cabin; I came out of my cabin that night.

When my steersman came back and hallooed to me, there was going to be a collision, or hallooed to my woman first, she ran up as quick as she could, and I ran up in a few minutes; she came back and hallooed to me, or she turned to come back, saw that there was going to be one and turned to come back and called me, you know; then I ran out as quick as I could, and ran over on to this boat, and saw the other boat.

She was in a sinking condition when I saw her first; the woman and child aboard the boat; the woman had just turned to come back from the bow of the boat, and the little child was running up to meet her; she came back to the child, and, I should say, that she stepped away—stepped from the companionway—she grabbed her mother round the body, and she hal-
113 looed, screaming for help, and her mother was screaming for help; her mother stood there until the water drove her on to the cabin, and the water, in a few minutes, came up on the bow, and dragged the boat down; when the force of the water came back it took her into the cabin.

I heard a man halloo, "save my family," and so on; I then heard some man say he couldn't let his tow go, somebody—I couldn't tell who it was at that time; that sound came from that tug that had the boats in tow; when I first saw this boat she hadn't only got—well, just nicely abreast of us—the tow winded up the river slightly, and the "Grant" was then with her boats right opposite to my boat; the "Lee" was swung around, and the "Grant" was just past her, so that she was opposite to my boat at the time when I heard this noise; the tide was ebb that night.

114 My boat was in the seventh tier of boats; there were some canal boats behind me; I think there were three tiers; the distance between the outside boat of our tow, and the outside boat of the "Grant's" tow—the nearest boat was about four rods, as near as I can calculate; that is, when I saw them, the "Grant" was then headed down stream towards the East River.

This canal boat sank slowly; she didn't go down sudden; she—as the water came on her deck—she kind of dragged in just like a log with an anchor hitched to it—kind of struggled like persons in the water that wanted help to get them out; she kind of dived—went down, struck her stern, came back and struck bow first; from the time I first saw this canal boat sinking until she went down, was about 20 minutes, I should judge; I didn't look at the time particularly then to get the correct time.

After I came out of the cabin that night; I ran over and looked for a boat; I ran to the next boat along side of me; I said—"Captain, have yon got a small boat on the tow?" and he says—"no; I haven't a small boat on board; you most generally carry one; and he says "no; I saw some more men; and I says—"does any of you know where we could get anything to get those women off that boat?" and they didn't; I ran right back and stood there again, and the boat hadn't gone down 115 yet; of course it didn't take me a great while.

Cross-examined by Mr. Benedict:

When I came out of my cabin, the steamboat "Grant" had the other boats in tow, and that was right abreast of my boat, this canal boat was right opposite—ahead of me; the distance between the "Grant's" tow and her, was abouta boat and a half; I saw the schooner and the "Parker;" she was then going on with her schooner to head off the tow, to put her in our tow; she went right on; this boat sank right opposite to my boat, right off to the left; right opposite, she kind of luffed about that direction towards the shore (indicating).

Our tow was in motion, but wasn't doing much more than holding the tow against the tide; she had a pretty large tow, and not using much steam at the time; when the boat sank, the 116 "Grant" and her tow—the boats that were alongside of her —were at at our sterns, I suppose; I couldn't tell you how far; I seen her after she had turned around and came back; I did not notice her turning around; I did not notice where the "Grant" was at the time the boat sank.

I came out of my cabin and went over on to the outside boat; I turned and jumped off that boat on to the deck of my own boat, and on to the other boat on the other side of me, and asked the captain if he had a small boat; I thought that he did; he was a man that I was somewhat acquainted with; I found he hadn't any; then I went back; the canal boat had not sunk when I got back; the water was just coming on her deck when I got back on to the other boat the second time.

I was examined on the coroner's inquest; I don't remember whether I said anything at that time with reference to hearing 117 anything said or not.

Cross examination by Mr. Campbell:

About 15 years I have run a boat; during that time I have always been towed by some tug-boat or other: I have been accustomed to run on the North and East Rivers; I expect one half the time, more or less; every year I am up and down the river, and around the harbor here.

I know the manner in which tows are made up, and the routes boats usually take at this time; I came from Port Johnston to between Piers 6 and 7, East Eiver, South street, to get towed up the river; to be put in the Austin tow, going up the river; Port

Johnston is about seven miles from Jersey City, on the Jersey shore, right opposite Staten Island ; they got the tow pretty well made up, I think, about 8 o'clock at night, with my boat ; I think they started up the river with that tow between 9 and 10 ; during that time they were engaged in making up the tow ; they were picking up boats all the while ; I had been towed with the Austin tow before ; they made it up in the same place ; they
118 always calculated to make them up there, so far as I am experienced ; the "McDonald" was our steamer ; I am not much acquainted with the tides ; I have never been towed from the "Stakes ;" I I have been towed from Morgan street, two blocks this side ; I know where the "Stakes" are.

Q. What was the usual route in towing from the "The Stakes" to go up the East river in the Sound ?

A. The tows I have always been——

Objected to. **Excluded.**

Defendant Austin excepts.

I am accustomed to the signals, the whistles and so-forth.

I know what it means when one whistle is blown, also when that is answered, and when two are blown, and that is answered.
119 I have heard the testimony here.

Q. Was it proper for the persons commmanding the "Grant," after they had answered the signal from the "Parker" of two whistles, to follow that up by blowing three whistles ?

A. No, sir.

Mr. Benedict.—I object to it.

The Court.—I will not allow it to stand.

Mr. Benedict.—Note our exception.

I was in a position where I could see the relative positions of all those boats at the time I came up. The "Grant," in coming over, came to the North side of the man-of-war. There was not anything in the way on the left hand side of the "Parker."

Q. Was there anything in the way to prevent the "Grant"
120 from passing on the New York side to the left of the "Parker" with her tow ?

Question objected to by defendant the Eastern Line, and the plaintiff ; objection sustained ; exception by defendant's Austin's counsel.

By Mr. Benedict :

I do not undertake to say what was or was not good navigation for either of those tow boats, before I came on deck.

Q. If the captain of the "Grant," when the "Parker" blew the two whistles, thought that he couldn't pass on that side—

on the left—and blew three whistles; that would be right, wouldn't it ?

(Objected to. Allowed).

Defendant Austin excepts.

A. I should say he should have gone to the left.

The Court: 121

The question is, assuming that the captain of the "Grant," saw that it was impossible to go to the left without a collision, was it good navigation to blow three whistles without answering any two, when he saw that he couldn't do that ?

A. Well, I supposed he answered the two ?

Q. Well, assuming that he didn't answer ?

A. Well, he should have blowed for danger.

My steersman said that there was going to be a collision ; that they hadn't run together yet. I was examined with reference to that at the coroner's inquest ; I did not testify there that my steersman said to me there was a collision ; I guess not ; if I did I have forgotten it.

By Mr. Campbell: 122

If the "Grant" didn't answer the two whistles, and answered the one whistle, it was her duty, instead of keeping head on, to turn to the right ; the "Parker" blew two whistles, and the "Grant" didn't respond,—that is their assumption he should then have turned to the right ; if he didn't calculate to go to the left, he should go to the right.

Q. Which of those two boats, as a navigator, do you consider to blame ?

Objected to.

Q. I put the question ?

The Court:

I will exclude it.

Mr. Campbell: 123

Note my exception.

By Mr. Benedict:

I testified, in answer to Mr. Campbell's question, that after the two whistles were blown, it was the duty of the "Grant" to go to the right when he blew the first whistle ; when the "Parker" blew two, that meant to go to the left ; it was the "Grant's" duty to go to the right if he didn't answer him back ; the "Parker's" two whistles told him she was going that way ; he should go to the right if he didn't answer her back ; they certainly would meet one another in collision if they went one way; I understand that the two whistles of the "Parker" meant to say that she was going on the right hand side of the "Grant;" I understand that it was then right for the "Grant" to go the same way if he didn't answer the whistles back; it was his duty to answer him back, and that would let the man on the "Parker" know whether he was going or not; but, probably, the "Parker" would, if he made 124 no answer, understood that the "Grant" was going to the left, as he was going to the left.

When the "Grant" blew the first whistle, that meant for the "Parker" to go to the right; that would be towards the New York shore; when the "Parker" blew one whistle, that would be understood that she was going towards the New York shore; when she blew two whistles, that would be a second statement that she was going toward the Jersy shore.

I do not say that it would be right and proper navigation for the captain of the "Grant," if he knew that the "Parker" was going towards the Jersey shore: it would not be right.

By Mr. Cook:

The "Parker," in that case, after giving a signal with two whistles, would have no right to change his course, unless it 125 was permitted by a similar signal from the other side, and the giving of the three whistles in answer to the two, would be an intimation to the "Parker" that he should not change his course; that is the thing I have been trying to say.

A. F. Warbarton, sworn for The Eastern Transportation Line:

I am a stenographer; have been such about 24 years; I am official stenographer of the Superior Court, New York; I attended on the corner's inquest which was held in Jersey City, in January, 1876; I attended on the 14th, 18th, 20th, and 25th; I was present during the examination of Hobart Cooper.

Q. Did you take reports of that examination?

> (Objected to on the ground that it is improper. Witness made private minutes of the proceedings. The 126 minutes made by the Coroner are the official record, and the only competent evidence.)
>
> (Allowed. Exception noted).

A. I took down the questions that were put to Hobart Cooper; I took them down in the words in which they were put; I took his answers to those questions; I took them in the very words in which he gave them; I also took in the same way the examination of Carrie Cooper; I took the testimony of Jennie M. Brown on the 14th, and Clayton Brown on the 18th; those that I took, I took by stenographic characters; I took them all myself; those papers (showing) are correct transcripts of the testimony given by them; they were taken down from my dictation, and afterwards compared by me.

By Mr. Cook:

I compared this case because I was subpœnaed once before on a trial up the country, and to make myself prepared, I compared the notes. Benedict employed me to take those notes, I don't know in whose behalf, but I got word from their office to attend.

Carrie Ann Cooper, sworn: 127

I am eighteen years old; I am the daughter of Captain Hobart Cooper; I was on board the boat "Lee" on the night of the 9th October, with my father, and mother, and sister; we were taken in tow by the tug "Grant" at the "Stakes," off Jersey City; I heard whistles blown that night; the first that I heard was by the "Parker" blowing one whistle; the "Grant" blew one whistle; then the "Parker" blew two whistles; the "Grant" blew two whistles; and then shortly after that, she blew three whistles; I heard the first whistle blown; I was in the cabin when I heard the first whistle blown; I listened to see if I could hear any more; then I started on deck, and asked my father what the three whistles were for; he said, "danger;" my mother and sister came up; he ran aft to put on the fender; he saw there was going to be a collision, ran back, and jumped, 128 and put me on the "Coalport;" as he rose, the line struck him, and knocked him down; as he and I got together I fell down, and then the line knocked him down again, and when he ran he went and begged of Charley "for God's sake to save his family;" to cut his tow-boat; Charley said he could not let his tow go to hell.

From the time I heard the first whistle blown until the second whistle was blown, was not more than half a minute, hardly; after the first whistle was blown, and before the second was blown, was not more than a second—about half a minute; then I heard two whistles; I heard those whistles answered right away; then I heard three whistles; between the time I heard the first whistle and the time I heard the boat struck, was not more than three minutes.

When my father said to me that there was danger, to call my 129 mother and the little girl, I was standing between the hatch and the cabin, about two feet from the cabin; I turned round as I was going in the cabin; my father caught me as he was jumping on the "Coalport;" I called my mother; as I was going into the cabin, my father came and grabbed me, and took me over into the "Coalport.'"

When I came out of the cabin, I first saw a schooner and a tow of boats—of light boats; the schooner was on the right-hand side, I think, and the tow on the right side; when I first saw her, she was not far off; I did not see her before the whistle; I saw the tow of boats on the left-hand side, the Albany tow of boats; there was about room for a couple of boat sto pass between the outside boat on the left-hand side of the "Grant's" tow, and the nearest boat on the Albany tow.

It was a clear moonlight night; I could see a good ways; after the collision occurred, our boat drifted back away from us; she drifted right round the "Grant's" stern; the tug-boat "Grant" did nothing; she kept right on; they did not back up; the tow of the "Grant" had not got a good ways from my
130 father's boat, on which was my mamma and my little sister, when the boat sank.

I could see from the "Grant" to the furthest boat; I could see my mother and sister on deck; I heard my mother say, "save me;" and Mamie says, "Papa, save me—don't forget your Mamie." He said, "have patience; I will save you;" at first I stood right opposite to the cabin; I could not tell you where I stood after that; I stood in a good many places; I saw them lowering a small boat, or a little row-boat from the "Coalport;" I didn't see them lowering any boat from the "Grant;" no row-boat was lowered from the "Grant" at all.

From the time that the collision occurred until the time that my father's boat went down was twenty minutes; they lowered the row-boat into the water after the boat in which my mother was, sank.

131 The tug-boat "Grant," that night, after the collision, turned round and went back up the river, and let us off at Pier 1; she turned round and went back where our boat was; the "Grant" did not back up; my sister's name was Mary Emma Cooper.

Cross-examined by Mr. Benedict:

I was examined before the coroner's inquest; I was present also at the Tombs Police Court when the examination was had there; I was not examined there; when I was examined before the coroner's inquest, I did not tell anything there about hearing any whistles; they did not ask me.

I came on deck just as I heard the three whistles; I was coming before the third—my father jumped from the boat right into our boat, after I came out of the cabin, so that he did not get into our boat until after I had heard the three whistles—just as
132 I heard the three whistles he jumped on the boat; I went on to the second step leading down to the cabin, and called; I told my mother, "bring Mamie out quick;" then my father took me; I was standing on the step when he took me; I was going into the cabin.

I don't know what was done with the engine of the "Grant;" I don't know nothing about it; when I say that the boat did not back up, I mean she did not go backwards; I did not hear any bells.

Cross-exam.:

I was in my father's boat when it left the "Stakes," and when the tug was hitched to the tow.

Q. Before the collision, did you hear any conversation between your father and captain Williams, about the mate of the "Grant" being drunk?

The Court.—I think I shall exclude it.

(Exception.)

The "Parker" and the schooner passed right on. Of course it took her a few minutes to get out from our boat; and the 133 minute she went down, she went down from our boat to the tow—the Albany tow; the Albany tow was nearly opposite us; it went up to the steamboat pier, or the head pier—either one; I never saw my mother alive after that night; I am eighteen years old.

Counsel.—We now offer in evidence the letters of administration.

THE PEOPLE OF THE STATE OF NEW YORK,
By the Grace of God, Free and Independent:

To Hobart Cooper, of the city of Brooklyn, the husband of Mary Ann Cooper, late of the said city of Brooklyn, deceased, send greeting: *Whereas*, the said deceased died intestate, and was at the time of her death, an inhabitant of the County of 134 Kings, by means whereof the ordering and granting administration of all and singular the goods, chattels and credits, whereof the said intestate died possessed, and also the auditing, allowing and final discharging the account thereof doth appertain unto us; and we being desirous that the goods, chattels and credits, of the said intestate may be well and faithfully administered, applied and disposed of, do grant unto you, the said Hobart Cooper, full power by these presents, to administer and faithfully dispose of all and singular the said goods, chattels and credits: to ask, demand, recover and receive the debts which unto the said intestate, whilst living, and at the time of her death, did belong; and to pay the debts which the same intestate did owe, as far as such goods, chattels and credits will thereto extend and the law require; hereby requiring you to 135 make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said intestate, within a reasonable time, and return a duplicate thereof to our Surrogate of the County of Kings, within three months from the date of these presents; and if further personal property, or assets of any kind, not mentioned in any inventory that shall have been so made, shall come to your possession or knowledge, to make, or cause to be made, in like manner, a true and perfect inventory thereof, and return the same within two months after the discovery thereof; and also to render a just and true account of administration when thereunto required; and we do, by these presents, depute, constitute and appoint you, the said Hobart Cooper, administrator of all and singular the goods, chattels and credits, which were of the said Mary Ann Cooper deceased.

In testimony whereof, we have caused the Seal of Office of our said Surrogate to be hereunto affixed.

136 Witness, William D. Veeder, Esquire, Surrogate of our said County at the City of Brooklyn, the third day of March, in the year of our Lord, one thousand eight hundred and seventy-six, and of our Independence the one hundreth.

W. D. VEEDER,
Surrogate.

Depositions of Lewis E. Lasher, engineer of the "Grant" at the time of the occurrence, read as follows:

Lewis E. Lasher, sworn.

Q. What is your business?
A. Engineer.
Q. How long have you been an Engineer?
137 A. For the last thirteen years.
Q. There are different classes of engineers?
A. Yes, sir.
Q. Of what class are you?
A. Chief engineer.
Q. You were engineer of the "Grant" at the time of this collision?
A. Yes, sir.
Q. How long had you been on that boat?
A. About a month, or six weeks, at that time.
Q. You were in charge of the engine on that night?
A. Yes, sir.
Q. As you were going down the river, do you know about what rate of speed the "Grant" was going?
A. I didn't take any particular notice.
138 Q. About how many revolutions was your engine making?
A. About 65 or 70 revolutions.
Q. How is that as to ordinary speed?
A. That is ordinary speed.
Q. Did you hear any whistles from the other tow.
A. Yes, sir, I heard the one whistle first.
Q. Did you hear that answered?
A. Yes, sir.
Q. What answer did you hear?
A. One in reply.
Q. Did you afterwards hear any other signal from the "Parker?"
A. I heard two whistles; I couldn't tell what boat it was; after that I heard three whistles in reply from the "Grant."

Q. Were there any two whistles in reply from the "Grant."

A. Not that I heard.

Q. You heard all the others?

A. Yes, sir.

Q. How far from your room where you were, is the whistle of the "Grant?"

A. On a direct line, twelve or thirteen feet.

Q. How far can you hear that whistle? 139

A. For some distance; it is a good large whistle.

Q. You could hear it full twelve feet?

A. Yes, sir.

Q. Did you get any signals for your engine?

A. Yes, sir.

Q. What signals did you get when you heard the whistles?

A. I had four bells and a hook-up bell.

Q. What do four bells mean?

A. Stop and go back; and the hook-up bell meant strong—full speed.

Q. That is sometimes called the jingle bell?

A. Yes, sir.

Q. Do you know how the vessels came together?

A. No, sir.

Q. Do you know whether the "Grant" was stopped entirely through the water? 140

A. I wasn't looking over the side; I know the engine was backing.

Q. What did you do when you heard those bells?

A. Reversed the engine at once.

Q. What do you do when the jingle-bell is heard?

A. Give all the speed I know how.

Q. What did you do that night?

A. Gave it full speed back.

Cross-examined:

Q. Have you been examined before?

A. No, sir.

Q. You don't give the signals?

A. They come from the captain or pilot—from whoever is in charge of the boat. They may come from the pilot-house or after-deck. 141

Q. You can't tell where they come from?

A. No, sir; but I am to answer them wherever they come from.

Q. It is no part of your duty to pay attention to the whistles?

A. No, sir.

Q. How far can that whistle be heard?

A. I couldn't tell, for I am not ashore.

Q. What do you mean by chief-engineer?

A. That is the way we rate.

Q. Are there any under-grades?

A. Yes, sir; chief, first assistant, second assistant, and third assistant.

Q. On that boat?

A. No, sir; you asked me how they rate grades.

Q. You heard a whistle before the collision?

A. Yes, sir.

Q. Did you hear more than one before the collision?

142 A. Yes, sir; there were two whistles blown from the "Parker" and three from us.

Q. Did you hear any from any other boat?

A. Not that I recollect.

Q. Was your attention upon the whistles, or upon the signals that were given you?

A. My attention was upon my engine.

Q. You were not called upon to hear the whistles particularly?

A. No, sir.

Q. Your business is to pay attention to the signals given you?

A. Yes, sir.

Q. Your attention was upon that?

A. Yes, sir.

143 Q. Do you know whether your boat was moving?

A. I was in the engine room.

Q. You knew when the collision occurred?

A. No, sir.

Q. You didn't hear it, or feel it?

A. No, sir.

Q. Did you go above, after the collision?

A. No, sir, I staid in my engine room.

By Mr. Benedict:

Q. You understood that the one whistle and the answer of one whistle meant to pass to the right?

A. Yes, sir.

Q. And you understood that the two whistles from the other boat was a change?

144 A. Yes, sir.

Q. Wouldn't such a thing naturally attract your attention?

A. Undoubtedly it would.

Q. What did you understand by the signal of three whistles from the "Grant?"

A. I knew he was going to stop the engine at once, and I stood right by the engine to handle it.

Silas Patterson, sworn:

I am an engineer; I was employed on the 9th October, 1875, on the "John N. Parker," one of Austin's tug-boats; I remember this collision with the tow of the "Grant;" at the time of the collision I was in the engine room; the engine is constructed different from other tug-boat engines; when I was working the engine I had to be out on the deck; at the time the signals were given for the "Grant," I stood over the half-door, with my head out on deck; I heard the whistles; the "Parker" blew one whistle first, and that was answered by the "Grant;" then the "Parker" blew two, and it was answered by the "Grant;" the "Parker" blew first; the "Grant" answered 145 with two; the "Parker" blew two, and the "Grant" answered with two; then the "Grant" blew three very soon after the two—right along, all in a few minutes.

I saw a light before I heard any whistle at all; may be half a minute before; she was coming on our port quarter; I was looking out of the port door and saw the light on her flag-staff; that is, she was ahead of us to the left.

I have been an engineer six years;. I am pretty well acquainted with the tides about New York Harbor, the same as any engineer; they ain't supposed to know about the tides; it was ebb tide; I don't know how strong; sometimes it runs stronger than it does others; I have been engaged a good deal in towing; my tug was a screw; I knew the "Grant;" we were holding our own against the tide; we were towing her along; we were doing a little better than holding our own with the 146 current; we were making from seventy to seventy-five revolutions a minute; that gives us, in slack water, a speed of about four miles, with the tow we had on; our boat was fuller than the "Grant."

We had her alongside; this schooner projected in front of the head of the bow of our boat about twenty feet; we got one bell to slow down, directly after two or three, slower; we got another one to stop, and then two bells to back, and then the jingle bell, that was to back as hard as we could; all that was before the collision; we were backing when the collision occurred; the collision occurred half a minute after that; I think our boat is eighteen feet wide; the schooner is a great deal wider; she is a very large schooner; three-masted; that is, some fifty feet width in both, I should judge; I could not tell when I first sighted the "Grant" and her tow, which way she 147 was heading; I only saw one light; that was the bright light, one bright light; I did not notice any side-lights at all; I did not see a red light; I did not see the second bright light; the schooner was on the starboard side; the right hand side; I was not looking on when the boats collided; I could not tell what position that schooner lay in, in respect to the canal boat, when they struck; the time between the blowing of the first whistle on each side and the collision, was not more than a minute and a half.

I did not see this canal boat when she went down; I was attending to my engine; I did not attend to the boat; I did not know where the canal boat was.

By Mr. Benedict:

I had my head out of the engine room door, but not all the while; I first put my head out of the engine room door before I heard the bells at all, or a whistle; I generally had my head out of the door, laying on the half door, looking out; it was generally very hot in the engine room, in the Summer time.

148 I stayed with my head out of the engine room door till I got the boat slowed down; that was after the first whistle was blown; it was before the "Parker" blew the second whistle; we had two bells before she blew the second whistle; when I heard the three bells, I brought my head back into the engine room; I don't recollect that I put it out again before the collision.

I do not remember coming to your office shortly after this collision; I know a man of the name of *Maynard*, who was a hand on board of the "Parker;" I remember coming to your office with Mr. Maynard; I don't remember being asked questions there in relation to how this happened. I have not got a very good memory; at times I have, of some things I have.

Q. Now, perhaps you can tell whether that is your signature?

149 (Paper shown.)

A. I don't think it is.

I did not sign and swear to that paper in your office on the 27th of January, 1876; I was not asked at that time by you about these whistles: I will swear I was not; I will swear that I never was at your office; I did not say, in answer to your question, that the "Parker" blew one whistle, and the "Grant" answered it immediately; then the "Parker" blew two, and then the "Grant" three; I never had any conversation with you.

Q. Did you not hear one of such questions put to you in the presence of Mr. Jones; stand up, Mr. Jones, so that he can see you.

150 A. I don't know the man; I don't know I ever saw him before.

I have been examined on another trial in relation to this collision up at Auburn; I believe that affidavit was read to me on that trial.

Q. Wasn't this question put to you: "That is your signature, and you swore to that affidavit." Wasn't that questien put to you—and by me?

A. I don't know.

Q. And did not you answer "Yes, sir?"

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Will you swear you did not?

A. I don't know; I don't know whether the question was put to me or not.

Q. What?

A. I don't know whether it was or not.

Q. Will you swear that that question was not put to you, and that you did not answer "Yes?"

A. I will not swear to it because I do not remember.

Q. Were you not asked by Mr. Campbell "When did you sign this paper?" and did you not answer to that (the Mr. Campbell who sits there) when asked by him, when did you sign this affidavit, and did you not say, "I don't know when it was?" 151

A. I remember seeing him and having some talk; but I don't remember what it was about.

But in this Court at Auburn, did not Mr. Campbell put that question to you, having this affidavit which I have shown you; and asking you, "When did you sign this affidavit?" and you answered, "I don't know when it was?"

A. I did not know when, because I do not know when I signed it.

Q. Did not Mr. Campbell then ask this question of you: "When you went to the place where it was, what was done; did "they state the contents to you, or read it to you;" and did you answer, "they read it to me?" 152

A. I don't know.

Q. Will you swear you did not say so?

A. I don't know; I could not swear.

Q. Wasn't the question then put to you again: "Do you swear that this affidavit was not written in your presence, from statements made by you?" and did you not answer: "I don't recollect?"

A. Well, sir, I did; that I don't remember at all.

Q. You will swear, then, that you did not recollect in the Court at Auburn?"

A. Yes, sir.

Q. Wasn't this question put to you: "You signed it and swore to it?" and didn't you answer "Yes, sir?"

A. I don't recollect that. 153

Q. Will you swear you did not say so?

A. It is hard to swear either way when you don't know.

Mr. Benedict—The affidavit is the 27th day of January, 1876.

Witness continues—I was in the employ of Mr. Austin; I was a licensed engineer; I had been an engineer four years at that time; I recollect the tow was there, preparing to go up the river; I cannot tell exactly where it was; I know very near where it was; within a few piers; the boat was along Pier 4, I should judge, and the tow about around the Battery wall, and we were going to take the schooner alongside the big boat, to put it in the tow going to Albany; Mr. Austin sent up a tow at that time every other night; they were made at this place generally about the same time; a little earlier Saturday night; it is a little later than any other night, but there was not much difference.

I know the officers of the steamer "Grant;" I used to fire the boat nine years ago; Austin was confined entirely to towing on the Hudson River. 154

The first bell I heard on my boat, was the bell to slow the engine down; that was before the first whistle; we got the slow down bell; the next was one, to stop; the next was two, to back; I obeyed promptly; when the collision took place I had reversed my engine; it would take about half a minute to stop her headway, with the schooner and all; I looked out and saw the "Grant;" I saw her out of our port door; she was coming out to our port; the left hand side; I could not tell which way the head of the boat was bearing; whether right hand, or left hand; it was so dark I could not tell.

The three whistles that the "Grant" sounded were for danger. It is for the other boat to do all she can to avoid a collision; that she was doing the same. I suppose that is the rule. I never heard anything different from that.

155 At the time of the collision my engine was backing. I could not tell whether she was going ahead through the water or going back through the water; if, instead of the first bell which I did receive to slow down, it had been a bell to stop her, and then immediately after that a bell to back had been rung, we could stop her in less than a minute.

Mr. Benedict:

Q. Mr. Patterson, were you not asked on the trial in Auburn, what effect the backing of your engine had, and did you not testify, "it stopped the speed of the boat, but did not stop the speed of the schooner; we only made twelve or fifteen revolutions before the collision."

A. Well, I don't know how far, whether we stopped or not.

Q. Did you not so testify then? That is my question.

156 A. I cannot remember.

It was the fact that we only did make twelve or fifteen revolutions before the collision.

I do not write my name very often in the course of the year; I am able to tell my own signature when I see it; I could write it.

By the Court:

Q. I wish you would look at that affidavit again, and see whether you may not have forgotten about that?

(Paper shown to witness).

A. It don't look like my writing.

By the Court:

Q. Does it resemble it, at all?

A. Well, I have seen a good deal of writing—I cannot write a business hand; that is not my writing.

I know this man, Maynard, intimately; I have no recollection of going anywhere with him.

William E. Jaycox, sworn: 157

I am captain of a steamboat; I am thus employed now on the tugboat "James McMahon," running round New York; I have been on this one boat here nine years—a tugboat, a propellor; I have been towing; I have taken tows alongside and astern; canal boats loaded and unloaded.

I suppose the strongest part of an ordinary ebb tide at Pier 1, North River, would run from three and a half to four knots an hour, in a freshet a little bit stronger; I am familiar with the waters there, opposite the piers one to ten, and across to the Jersey City shore; I know how the "stakes" are at Jersey City.

I saw the "Minnesota" lying off there, a week or two before this collision took place, in the fall of 1875; I don't exactly remember the date; she was about half a mile, or three quarters below the "Stakes," this side, and to the eastward, generally, about five hundred yards off from the battery, pier one 158 or two, somewhere there; there was a thousand or fifteen hundred yards of sailing water to the west of the "Minnesota," I suppose; I should judge that, taking it in the night, it would depend upon circumstances whether it was prudent, steering from the "Stakes," to go to the left hand of the "Minnesota."

Q. What was the proper way to go, having safety in view, in going from the "Stakes" in this case?

(Objected to by counsel for Austin.)

(Objection overruled. Exception.

A. That is a pretty hard question.

If I had been there myself, had charge of the boat, and there were tows coming up, if there was anything that was 159 pretty close between the ship and the piers, why I should certainly have gone to the westward of that ship and come into the mouth of the East River; there was three times as much water to the west as to the east; one thousand to fifteen hundred yards of river to the westward of the ship, and it was just as direct to a ship bound anywhere from the Jersey shore—bound for the mouth of the East River.

I have seen the "Grant;" I have noticed her size and strength; she is a large boat,

Q. Having four vessels—four canal boats alongside—one of them, at least, loaded, and probably all; having them all loaded, I will assume, with coal, and taking it in slack water, how fast side than on the port side, and it would naturally go the heaviest way; everything else being even, it would be done by the tides, precisely in the current; if she is headed a little one way, it would head her a little more that way, if backing against the current; if you are coming down with a tow, and I am going up, I blow you one whistle; you answer my whistle.

166 *The Court:*—Stop there. Assume that the "Parker" blew the first whistle?

A. Yes, sir.

The Court:—Then do I understand you that, according to the rules, the "Grant" had a right to answer that by blowing one whistle?

A. Yes, sir.

The Court:—Which indicated to the "Parker" that it acquiesced in that?

A. Yes, sir.

The Court:—Then both would take the right?

A. Yes.

167 *The Court:*—Or he had a right to blow two whistles, and stop his boat?

A. Yes, sir.

And stop either.

Mr. B.:—To blow two whistles, means to go to the other side?

The Court:—She had a right to do that?

A. Yes, sir.

The Court.—If she did not do that—if she blew one whistle, put down the helm so as to turn to the right, and then the "Parker" changed its mind and blew two whistles, then the "Grant" had some option, either to blow two or blow one, keep on the right, or stop his boat again?

168 A. Yes, sir.

Counsel.—Q. When the "Parker" blew one whistle, which indicates to go to the right, you say the "Grant" has a right to say, "yes, we will do it," and blows one whistle?

A. Yes, sir.

Q. He has a right, on the contrary, if he thinks he cannot do it, to object to it, and give the contrary whistle?

A. Yes, sir; blow two whistles.

Q. Isn't it his duty to do so, if he sees an obstacle going to the right that he cannot overcome?

A. If he cannot avoid a collision by going to the right.

Q. It is his duty to change his signal, and stop his vessel?

A. Yes.

Q. And instead of answering the signal to go to the right?

A. Yes, sir; that is often the case every day.

Re-direct by Mr. Cooke:

Q. After the first whistle had been blown and answered, then the "Parker," in this case, blew two whistles; if the "Grant" responded two whistles, that indicated that each turn to the left, didn't it? 169

A. Yes, sir.

Q. Until they first put the first signal—two whistles—after she had blown two whistles, admitting that she acknowledged that if the "Parker" turned to the left, she would—she ought to have turned to the left?

A. Yes, sir.

Q. And it was bad navigation not to do it?

A. Yes, sir; after he had blown his whistles; I should say so.

Q. After she blew the two whistles, what was her duty—after the "Grant" blew the two whistles in answer to the "Parker's" two, what was it the duty of the "Grant" to do?

A. It was her duty then to go to the left.

Q. Suppose, instead of that, she blew three whistles, and did not turn at all, was it good seamanship or navigation to do it? 170

A. That depends on how close he was to the "Parker" and her tow; if he was right on top of them, it was his policy to stop his vessel or back it then; that is all he can do; but if he was on the right side, and the man in that pilot-house was not able to take care of that vessel, and he got confused with his vessel, why then the "Grant" was to blame.

There is nothing that would prevent a boat leaving the "Stakes," and, instead of going round the United States vessel that I speak of, going straight down there to the Jersey shore; the water is sufficient to take any tow, or any ship.

By Mr. Benedict:

Coming down there with the tow, from the "Stakes" going into the East River, the course I take would be governed by the position of the vessel at the time; I would choose a course on either side of that vessel, according as either seems to be safest. 171

Q. Supposing the "Grant" and the "Parker" meeting each other nearly head and head, and the "Parker" blows one whistle which the "Grant" answers with one whistle, and ports her wheel so as to swing her bow; then supposing the "Parker" blows two whistles and the pilot of the "Grant" blows three, and stops, and backs his boat—isn't that good seamanship?

A. Well, I should say it was; I never have served on the "Grant," never worked for the line at all; there is great variation among different boats, as to their power and what they will do.

Q. You do not undertake to speak with any accuracy as to what speed the "Grant" would be able to tow such a tow as that?

A. Well, as I said before, four or five miles an hour—that is, in slack water; however, she might do better.

Q. Or not so well?

A. Yes, sir; she might do as well.

172 *Counsel—Mr. C.:*—Now, since you answered that last question, after the "Parker" had sounded one whistle, and the "Grant" had answered it, and the "Parker" then sounded two whistles, indicating a change of course, and the "Grant" did not answer, wasn't it the "Grant's" duty to keep to the original course?

Witness.—If she did not answer it.

Q. It was her duty then to keep to her original course?

A. If she did not answer the whistle.

Mr. B.—They say she answered two.

Counsel.—If she did not answer it with two, wasn't she bound to alter the original course?

173 A. If she had answered it with two whistles, of course.

Q. Suppose she had answered with two; when the "Parker" sounds her two whistles, the "Grant" answers with two?

H. She had a right to keep under way, and go the left.

Q. Was it proper to answer with two, so as to put the "Parker" to have changed the course, and then ring the three, blow the three—to stop?

A. I could not answer that question, because I was not there; if I was there in that position myself, I could answer it.

The Court—It depends on whether it was inevitable that they would come in collision?

A. Yes, sir.

Q. If it was inevitable that they should come into collision?

A. *Witness.*—Then to stop and back.

174 *Counsel.*—Yes, after the second whistle to immediately follow it up with three, not to change the course?

A. No, sir.

Counsel—Mr. B.:—Assuming you were on the "Grant," you saw the "Parker" nearly ahead; she blew you one whistle, which you answered with one; and put your wheel aport; then she blew two. And suppose you answered that with two; and you saw immediately, that by starboarding your helm, the vessels were going to come together, would it not be your duty to blow three, and stop and back?

A. Yes, sir, I think it would.

Q. *Counsel.*—Would it not be your duty before you responded with the two, to ascertain whether it could be done or not? Isn't your duty after the signal comes from the other boat, to know from you whether you can avoid a collision, to comply with that proposition?

A. If I was there myself, and placed in such position as that is, I would blow a man two whistles; a man supposed to be 160 competent enough to take charge of my vessal for me, stands on my port bow or starboard —

The Court.—Do you make up your mind whether you can safely go on in the way you wish him to take?

Counsel.—After he blew the two whistles?

Q. Whether you answered with one whistle, because every other man gives one whistle, or whether you make up your mind whether that is practical or not—whether you ought to go that way or the other?

A. If a man blows me one whistle first, and I saw that was all right, I would answer it; but if I saw the man was not able to get clear of me, I would answer his whistle, and then blow him three, and get an answer from him; and if I did not get an answer from him, I would stop and back my vessel till I got it. 761

Q. *By the Court.*—It is not good seamanship to answer a whistle till a man views the situation, and sees whether that would be judicious or not?

A. Not at all times.

Plaintiff rests.

Mr. Benedict:

We move to dismiss the complaint, so far as our boat is concerned. I submit there is nothing gained by our going on to try this cause here, if I am right in my propositions of law, as to the duty of the captain of the "Grant" when the first whistle was blown.

The Court.—It seems to me that there is considerable evidence 177 that should be submitted to the jury, involving the question of credibility, &c. Neither party is injured, except as to the time. I feel constrained to hold both these defendants, and submit to the jury, the question whether either, or both, are liable in this case. I think it would be an error to take it away from them.

Exception taken.

Evidence for defendant "The Eastern Transportation Line."

The counsel for the defendant "Eastern Line," proposed to read from the stenographer's minutes of the proceedings, before the Coroner's jury, taken by Mr. Warburton, January 14, 1876, the testimony of HOBART COOPER, in relation to the whistles.

Counsel for Austin objected that the same could not be properly read to the jury, as it was not legal or proper evidence for any purpose.

Objection overruled. Exception taken.

178 The same was then read in evidence, as follows :

Q. You are not sure who gave the first signal ?

A. No, but I think it was the "Parker ;" I would not be certain.

Q. What was the signal ?

A. I believe there was one whistle.

Q. One whistle ?

A. One whistle I believe, first.

Q. Did the captain of the "Grant" answer that whistle ?

A. I think he did ; they answered one another.

Q. I ask what the signals were ?

A. I can't say for certain, but it was one signal from the "Parker," and the "Grant" answered it ?

Q. It was one, and the "Grant" answered it ?

A. Yes.

179 Q. Who gave the second signal ?

A. I believe the "Parker ;" I think it was the "Parker" gave the two whistles.

Q. What followed afterwards—were there any more signals given ?

A. I believe the captain of the "Grant" gave three ; the captain of the "Grant" gave three.

Q. Did he answer the two whistles given by the captain of the "Parker ?"

A. I think he gave three instead of two, and he said there was danger.

Q. He gave three whistles for the two ?

A. I think it was three he answered for the two ; I won't be certain ; I think it was three that he answered for the two.

Q. Did he say to you verbally there was danger, or was it by 180 signals you discovered ?

A. I believe he said there was danger, and he commenced to blow, and I jumped out of the pilot house when he commenced to answer.

Q. Did you notice that night if all the lights were in their proper places on the tugboat, or outside on the tows ?

A. I did not, sir.

Q. You did not take notice ?

A. I didn't take notice ; no, sir.

Q. What part of your boat was struck ?

A. The bow, on the right hand side of the bow, between three and four feet from the stem.

Q. How large a hole was made by the collision ?

A. Well, I can't say.

Q. About how large?

A. She was cut down pretty well forwards where the schooner struck her.

Q. What kind of night was it?

A. Clear, nice night.

Q. Could you discern objects on the river?

A. Yes, sir. 181

Q. What was the distance between the two tows when the captain of the "Grant" first discovered the "Parker?"

A. I can't say, but it was a considerable ways off.

Q. What do you call a considerable ways—state, as near as you can tell?

A. I think they were 1,000 yards off.

Q. At least 1,000 yards?

A. I think so.

Q. What did the crew of the "Grant" consist of?

A. I do not know for certain how many.

Q. As well as you can state?

A. The captain, the first mate, and two deck hands and the steward, I believe.

Q. Tell us how many you are positive of?

A. I believe that is what I saw on her. 182

Q. That is the customary number?

A. Yes, sir.

Q. What was the condition of the tide at the time of the collision—running out or near slack?

A. It was running out.

Q. About how strong?

A. I can't say how strong it was; I never noticed the tides much; my duties did not call for it; we have been towed with steamboats, and I didn't have to watch.

Q. You don't know whether it was the first of the flood tide or slack?

A. It was running out, it was running pretty strong; I can't tell how strong.

Q. At the time of this collision, were the engines of the "Grant" reversed or stopped? 183

A. I cannot state.

Thomas Maher, sworn:

Direct-examination:

I am Orderly Sergeant of United States Marines; I am stationed on board the U. S. Frigate "Minnesota;" I have been stationed on board of her two years the 24th of June next; the vessel has been lying off the Battery; I remember the collision that occurred on the night of October the 9th, 1875; the "Minnesota," at that time, was lying off Pier No. 1, North River, or off Castle Garden I think; she lay seven or eight hundred yards from the shore—somewhere about that—I can't exactly tell; I was on the deck of the "Minnesota" at the time of the collision; I was on guard, sir; I did not know the name of either of the vessels at the time.

I saw the vessel that was going up the river; it was a tug that was made fast to a three-masted schooner that she was towing; she was on the starboard board side of the tug; I was walking on the port gang-way at the time this tug blew one
184 whistle that was towing the schooner; I came over on the starboard gang-way, and went up on the gang-way ladder; I saw this tug towing the schooner; after she passed up a little ahead of the gang way she blew two whistles, and the captain or pilot, whoever he was, crying out to the man at the wheel to put the helm starboard; I don't know whether it was on the schooner or the tug, but one of the vessels, I couldn't say which—that is, on the "Parker" or the schooner; I then looked up the river, and I saw this tow coming down between us and the Battery, and there was a large Albany tow going up at the time, about half-way between us and the Battery, something close to the Battery; it might be, I should judge, about half way; the tug that was coming down was partly ahead of her in between; I had to look under the waist-boat—that is, past the boat hanging on the davits; I had to look under the
185 boat; I knew there was something up when I heard this tug blowing the two whistles; I saw this tug coming down, and I couldn't exactly see what it was; I knew it was a tow coming down; I couldn't say whether I heard any whistles from that tow; I think I heard three whistles; I think it was three that I heard, to the best of my opinion; I heard this, that I think was the three whistles, shortly after the two whistles; I did not understand the language of the whistles at the time; I understand them now; the tug that was towing the schooner was about thirty yards away from me—right close; the other vessel, when I saw her first, must have been six or seven hundred yards, or somewhere about that, up the river.

I saw the vessels come together; they came together about a hundred and fifty yards, or somewheres about that, from the "Minnesota;" they had not passed the stern of the Albany
186 tow at the time when they came together; they were abreast of the Albany tow when they came together; I did not notice any change in the course of either vessel.

I reported the case to the officer on deck; I said there was a collision on the river; he was speaking to one of the other lieutenants; he sent down word to Captain Johnston by the orderly at the cabin door; he sent word to the captain, and captain came up in his night-gown; he gave orders to lower a boat; he got the men out of their hammocks to man a boat; there was a lot of green boys that time on the ship—(that is, a school-ship), and the boat's fall fouled, and it took them some time to get her in; but the boat was finally put in the water.

I did not see a light on the boat that was struck after the collision; I saw the boat herself so as to know when she sunk; I was standing there the whole time; the boat went down before they attempted to lower the boat off our ship at all; from the time of the collision until the time that boat sank, was no more than five minutes, or something less, if anything; she was about a hundred and fifty yards away from the "Minnesota" at the time; the tug that had had her in tow when she sank, was, I judge, about the middle of the Albany tow; the boat went down so quickly that I could hardly see how far the boat 187 that was sinking was away from that tug.

Cross-exam.:

My attention was called to the schooner and this tow by the whistle; I noticed her before the one whistle; when she blew the one whistle, she was about on our quarter; the tide was running against her so that she made little headway against the tide; she was about on our quarter when she blew one whistle, about thirty yards from where I was standing when I saw her first; when I was over at the gangway, she was abreast of the gangway; she was abreast of the gangway when I took notice of her; that was before she sounded the two whistles; she was about 25 or 30 yards distant from the "Minnesota;" she was heading the same way we were; I looked under the boat that was hung, and saw the bulk of this tow coming down some 188 six or seven hundred yards off; she was, if anything, a little on the starboard of our boat; she was apparently heading down the river when I first saw her; I couldn't see how much to starboard she was, because I had to look under the boat to see; I went down on the grating to look; I think she and the "Parker," and the three masted schooner, were apparently on a line then—somewhere on a line; I did not notice whether they had changed their course.

The "Parker," with the schooner in tow, came along just about as near our boat after that signal, I didn't see that she had varied her course; I couldn't say whether she made over towards the New York shore at all; I couldn't say whether the tow coming down came with a good deal of speed or not; the tide was running strong ebb at the time.

Between the giving of the single whistle and the double 189 whistle wasn't long—a minute or so; I could not say exactly a very short space of time; during that time the "Parker" had made from our quarter up to our gangway; our ship is about, I think, somewhere between 310 and 320 feet long; our gangway is not quite half ways forward from the quarter, more than a hundred feet—about a hundred and fifty; the boats had got out into the stream when I saw them strike; when they came together they were further over towards the New York shore than when I first saw them; it was a little ahead of the "Minnesota"—150 yards, as near as I can judge, out into the stream towards the Albany tow, I should judge it was about half way or somewhere there, between our ship and the Albany tow; both boats had moved up some hundred yards or further towards the Albany tow when they came together, than they were when I first saw them.

I do not remember what part of the ebb tide this was, it was running pretty strong at the time; the canal boat sank to the right of our ship on the starboard side, up stream, sir, in an oblique line; in order to see, I looked under the waist-boat; I also saw the Albany tow at the time; I saw this bulk or tow
190 going down stream; I could see it without looking under the davits.

I should say the canal-boat sank between the centre of the tow and the towboat that was towing them; it was somewheres about in the first half of the tow; that tow was near abreast of the "Minnesota;" I don't know what became of the three-masted schooner after the collision about the time this boat sank; she went on the starboard of the "Minnesota," between the "Minnesota" and the large tow that was going up thirty yards off the "Minnesota."

From the time I called the captain's attention until they got the boat overboard, I should say it was upwards of fifteen minutes; it took all that time to get the boat into the water; if everything had been done properly, the boat should have been launched in a minute; three men would do it, but these boys
191 didn't understand it at the time; I did not see the woman on board that boat when she went down; I heard her, though.

Cross-examined by Mr. Campbell:

I was examined before the Coroner's Jury; I said I did not understand about the whistles; I made a statement that the tug that was towing the schooner blew one whistle, and then blew two; I did not say, before the Coroner's Jury, that I couldn't remember anything about the whistles, because I couldn't; I heard the whistles.

I was also examined at "Auburn;" I there said "three;" I testified that I heard three; I did not testify that I couldn't say how many whistles were blown; I testify now, and I testified then, that this tug that was towing the schooner blew one whistle, and then blew two; my memory is good; I never lost
192 my memory yet, thank God.

When I first saw the "Grant," she was about 700 yards from the "Minnesota;" she was coming down the river when I saw her, straight down the river, so far as I could tell; when this collision took place she was 150 yards from the bow of the "Minnesota," in an oblique direction from our bow; the Albany tow was about half-way between the "Minnesota" and the New York shore; the "Minnesota" was eight or nine hundred yards from the New York shore, from the Battery, and the "Grant" passed by about half-way between the Battery and the "Minnesota."

Re-ross Examination of Mr. Cooke:

I heard, as plainly as I hear you asking me, the man holloa to put the helm starboard ; he was so close you could hear him —not over 30 yards off ; then he was about opposite our gangway.

Re-cross Examination of Mr. Campbell :

The "Parker" had passed up—the collision was after she passed up, past where I was standing.

193 When I first saw both the "Parker" and the "Grant," I should say they were about 700 yards apart ; that was after the two whistles were blown that my attention was drawn ; she was a little past the gangway when they blew the two whistles.

The tide did not change during my watch ; the "Minnesota" was heading up stream when I went on watch, and she kept that way ; my watch was four hours ; I went on at 8, and came off at 12 ; this occurred before I came off, 20 minutes to 12 o'clock ; the tide don't turn for eight or ten hours sometimes.

Re-direct Examination by Mr. Benedict :

It was a starlight night ; the "Parker," when I heard the first whistle, was about off our quarter—the starboard quarter ; when I heard the two whistles she was passing the gangway ; I was standing on the starboard gangwao ; I was on the port gang- 194 way when my attention was first called ; after passing the gangway she blew two whistles, and this man gave the order between the two whistles to put the helm starboard ; it was a few seconds only after I got over into the starboard gangway I heard the two whistles ; I was on the gangway when I saw the vessel go down.

I fix the time of the sinking of the boat after the collision in this way ; bells strike every half hour there, on board the ship ; it strikes up eight bells when it is 12, and at half-post 11 it strikes seven ; it was about twenty minutes to 12 o'clock, because the orderly came up and said he would call the relief who was to relieve me, and he went down below to call the relief, and we generally call them at twenty minutes to the time ; this was about at the time the collision occurred, at twenty minutes to 12 ; they struck about that time he was speaking 195 to me.

Charles Williams, sworn :

Direct Examination by Mr. Benedict :

I am captain of a tug-boat, and have been about four years ; I have followed the water about twenty-five years ; I was in command of the "Grant" on the night of this collision ; I had at that time been in command of her about three months ; I had four boats in tow ; the tow was the heaviest on my starboard side ; I was at the wheel ; Captain Cooper was in the pilot-house with me ; Captain Cooper came into the pilot-house while we were coming across the river ; I headed down the river about at Pier four or five ; there was a big vessel anchored in the middle of the stream, and some more, couldn't tell how many ; there were a good many vessels there ; I saw this Albany tow ; I saw the "Minnesota ; as I was making down the river. I was going mid-way between the Albany tow and the "Minnesota;" they were about 250 yards apart, I should judge.

I did not see the lights of the "Parker" and the schooner ;
196 I saw a bright light ahead, what I supposed was a schooner
anchored off the Battery ; after I got down past the Albany
towboat I heard a whistle ; he gave his one whistle, and I saw
the steam from the side of that schooner ; I looked to see what
lights she showed then ; she then showed one bright light, but
no red side-light ; there were not two lights, one above the
other ; this one bright light was on the schooner.

When I got this one whistle, that bright light bore pretty
near ahead, a little bit on the starboard side if any, but not
much ; if the two vessels had kept right on as they were heading
then, without any final change, they would come together,
of course ; I understood what one whistle meant ; I understand
it to mean to go to the right ; I blew one whistle and put my
wheel a-port ; the effect of putting my wheel a-port was to
shove my tow to the starboard ; it did have that effect ; before
197 I got any other whistle I ran about probably 200 yards ; I then
got two whistles ; the "Parker" and schooner, when I heard
the two whistles, seemed to be about 200 yards away, I should
judge ; when I got the two whistles from the "Parker," I rang
four bells and the jingle bell, then I blew three whistles ; I did
not blow two whistles.

The ringing of the bells, and the jingle bell, was to go back strong ; I blew the three whistles to let them know I was stopped ; I stopped because if I went on he would run over the whole tow ; if I had kept on my course, he would run over the whole tow ; the effect of backing my tow was to give them time to get by if they could ; I made no change of my wheel, but slacked it up, sir ; I did nothing else, because it was no good when I back—it was no good to move my wheel the other way.

198 After I stopped and backed, and blew three whistles, nothing was done on our boat until the two vessels came together, that I know ; there could be nothing done ; the schooner struck the outside boat on my starboard side ; another, second one, a little bit, but not damaged very much ; when she struck the vessels were heading pretty near straight ; when my boat answered her bells, I got her light by my backing ; I got her light on my starboard side before she struck ; I remember when Captain Cooper left the pilot-house ; he left it as soon as I rang the bell to go back ; I think I said when I heard the two whistles, "he can't ever clear me now ;" I think I said that ; I can't say for certain ; that was before Cooper left ; when I put my wheel a-port, Captain Cooper helped me put the wheel over.

At the time when the two vessels came together we were
about 100 yards away from the Albany tow; about the same
distance, or 120 to 150 yards from the "Minnesota;" I had not
got down ,to the "Minnesota:" I was about 150 yards in a
north-east direction from the "Minnesota" when it happened;
after the boats struck, as I stated, they parted the lines,
and schooner carried the canal-boat on her bow; I couldn't
say how much; I ordered the boat overboard right away; 199
my pilot was on the "Coalport," and he hallooed to me,
"we have got a boat handy here;" my pilot told me "we have
got a boat handy here," and I said, "go ahead, and do the
best you can, as quick as possible;" so I went up on the
upper deck, and I hallooed to the schooner; I saw she had a
small boat hanging on the davits, half-way lowered down; I
hallooed, "lower that boat and get on board of that boat, and
take those women off;" I hallooed three times as loud as I
could, and got no answer, the boat was then about twenty feet
from the tow, and I could see she was settling; it was twenty
feet from the schooner's stern to the canal boat that was sink-
ing; our small boat on the "Grant" was standing on the upper
deck on the side, davits, tackle, and everything handy; the
boats alongside the "Grant" were ranged with their sterns
even with the after part of the house; this boat was standing 200
right aft the smoke stack; the boat was forward of the stern of
the "Coalport" about 20 feet; that boat could not have been
got out into the water without carrying it either over the "Coal-
port," or to the rear of our boat.

I saw the men at work getting a boat into the water; I did not know who went in the boat until I asked Captain Cooper: he came in the pilot-house, and I asked him who went in the boat, and he says "one of your men;" says I, "why didn't you go?"—he says, "what good would I do there?" When the boat got in the water, the sinking boat at that time was, I should judge about 200 yards away from it; I did not see the boat when she sank; I looked back, and saw she was gone; I couldn't tell the minute she was sunk; the small boat was pretty near to her before she sank.

I was backing at the time she struck that boat; she ("Lee") 201
couldn't be very far to the starboard I know when I got turned
right up the river again.

The tide that night was ebb; I calculated it was running about two knots an hour that time; before I stopped and backed my boat, I was making about three miles an hour, besides the tide.

I could not have got around with my boat to that sinking boat as quickly as the "Coalport's" boat was got out and got there; the small boat was back to my boat again before I got turned around; I turned around as quick as I could; if I had cast off the lines of the other boats, that would have taken longer yet.

After the collision, the captain came in the pilot-house just as soon as the small boat was out; before the canal boat sunk, this was said: I believe he asked me to hurry up and back—get around; and I said I was doing all I could. Nothing was said at that time about throwing off the tow; there was something said, after I had been turned around and saw everything was done, he asked me, why I didn't cast off; I said I could not do it so quick—the quickest way was to send the small boat.

I had on the "Grant" that night eight hands altogether, 202 counting myself. Before the collision two were forward and one aft; that is my crew on deck; the rest were below, fireman, cook, &c.; Charley Hicks and Henry Strubbe were forward; the other man's name was Peter Svendsen; he was aft; that is where I stationed them; I didn't see whether they were there, but I stationed them to be there; Mr. Hicks came into the pilot-house before the collision; he came in as soon as I stopped, and backed the boat; he did not come into the pilot-house before Captain Cooper left; he went out about the same time, I think.

Cross-examination by Mr. Cook:

Q. How long after you left the "Stakes" before you sighted the "Parker?"

A. In the neighborhood of an hour, I should judge; might be three-quarters of an hour; I can't tell exactly the time; I 203 did not see the "Minnesota" when we left the "Stakes;" I saw the "Minnesota" first; I knew she was at anchor from her light; I think I may have been fifteen minutes in sight of the "Minnesota" before I saw the "Parker;" I saw the "Minnesota" and the Albany tow about together, and made up my mind to go in between the two; I didn't come round the "Minnesota" until after the collision.

Q. When you first saw the "Parker," which way were you steering?

A. About south by east—no, may have been south-southeast.

The Court.—Were you steering parallel with the shore?

A. Yes, sir; the New York shore.

Counsel.—Were not you steering towards the tail of the Albany tow?

204 A. No, sir; not exactly.

Q. Didn't you testify that when you saw the "Parker," you were headed towards the tail of the Albany tow?

A. Yes, sir.

Q. Was that true?

A. Yes, sir.

Q. Where was the "Parker" then, with reference to you?

A. I didn't see the "Parker" then; I didn't see the "Parker" when I was steering to the tail of the Albany tow. I hadn't seen the "Parker" then; when I saw the "Parker" I had changed my course to steer right straight down the river; I was then about pretty near abreast of the Albany towboat; I was then, probably, three hundred yards from the towboat—may have been more—and near abreast of them; I was on the starboard side of the "Minnesota;" I was not on a line that would carry me to the west of the "Minnesota."

Q. When you first saw the "Parker"—when the "Parker" blew her one whistle, I understand you were headed down the river, about three hundred yards from the Albany tow?

A. From the towboat?

Q. Well abreast of the boat? 205

A. Yes.

Q. You were headed down in the same direction as the tow was?

A. Yes, sir.

Q. So if you had kept that same course right down at a distance of 300 yards from that towboat, then would you not have gone to the west of the "Minnesota?"

A. No, I would not.

Q. Didn't you say in your direct examination that you were only 250 yards apart?

A. Yes, the stem of the tow; that is about all; I was about 100 yards from the tow; I kept about a hundred yards from it all the way through.

Q. That was about the distance you were from the tow at the time of the collision? 206

A. Yes, sir; I mean to say that at the time I speak of, being 300 yards, was from the towboat.

Q. That you were only a hundred yards from the line of the tow itself, or had you gone in a little near the tow?

A. Yes, ; I saw when I was abreast, or before that, the schooner was anchored, and we had to go across to clear her, and that brought me a little nearer the tow, that brought me down the river; I was steering down a little while when I saw this light; I altered my course to go right between when I came to see this light.

Q. Did you signal them?

A. No; I don't signal a vessel lying at anchor.

Q. What vessel are you speaking of?

A. Of the vessel that I saw the bright light on.

207

The Court.—It looked to be a vessel at anchor?

A. Yes, sir.

Counsel.—That is when you changed your course?

A. No; that was after I changed my course. Before that I had been heading somewhat towards the tow; when I changed my course I was, maybe, 150 yards from the tow after I had; the tow was straightened down at the time of the collision; I was about a hundred or may have been 150, too; I can't tell that exactly. It wasn't very dark—it was not a very light night; I could see a vessel lying at anchor three or four hundred yards; I could see a vessel 400 yards; I couldn't of course make out exactly what it was; I couldn't see a yawl boat that far.

Q. I mean a boat as large as the "Parker" or "McDonald;" how far could you see that?

A. About 500 or 600 yards.

Q. No further?

A. No, sir; not without a light.

208 I was a witness before the Coroner; I said then I could see a light two or three miles.

Q. Did you use this language, "I could see two or three miles without a light—without a light that night?"

A. I did not say without a light that night.

I signed a paper that was written for me, but I did not say, "without a light."

When the "Parker" blew the first whistle, I was about between four or five hundred yards; I don't think it was further than that; I saw her a little over our starboard, very little, not much, not over one point, may have been only a half a point; at that time we were making not more than ordinary revolutions, 60 or 70 very likely; I had four canal-boats; I don't know what they were loaded with; when I took them in they were loaded; I didn't know what they were loaded with: I 209 didn't know whether the boats on the right hand were loaded with coal or not; I didn't know when I made up the tow; I knew they were loaded deep, all of them; they were not all about the same size; the "Coalport" and the "Lee" were the largest; I don't know which was the next largest, the "H. Parker"—a number 5 lighter, I think she was; when we take in tow four boats, we try to have the weight equalized, when they lay handy to take up; it don't make much difference in steering though; I noticed which side was the heaviest when I took them up—I put the canal-boat so much forward of the tug, to handle them better; I can steer a great deal better to have the stern of the tug stand back.

We were four or five hundred yards distant when they blew the first whistle; on receiving the first whistle, I hove my wheel hard aport and blew one whistle.

210 *The Court.*—Were you at the wheel yourself?

A. Yes, sir.

I did not change my wheel again until he blew two whistles; I couldn't tell exactly how long that was after I put my wheel aport—may have been half a minute; I don't think it was much more; we were then about 200 yards apart, I should judge; I had approached then three hundred yards; in the meantime the porting of the helm had taken effect; that changed our course two or three points; I kept my eye on the "Parker" when the two were blown; she was about three or four points on my port bow; that is the light I have referred to which turned out to be on the schooner; I could tell she was heading right for me; I lay four points from up and down the

stream, or three, and hadn't rounded to the right; my boat
was a right-handed screw propeller, but I can't swear to that;
I am not on board of that vessel yet; I remained on board that
vessel, the "Grant," about three months before this accident;
I was on board of her until I came back from the East, and
they arrested me; I have not been on board of her since; I
never took notice which way the wheel turned; I don't know
that it is necessary, in navigating a tug-boat like that, that I 211
should know which way it turns; the boat was about a hundred feet, may be a little more or short of it; the stern projected back some 20 odd feet further than the canal-boat.

Now, in suddenly backing that boat, or when she is perfectly
still and about to start, it is not necessary to know what way
that wheel turns over, in order to know what effect it would
have upon the immediate direction of the boat; it is necessary
for me to know which way the boat is turning; I don't think
it makes any difference, if we stop suddenly, which way the
wheel turns; I think in half a minute's time I had changed the
direction of our tow four points; the tide was about two knots
that night—two knots an hour; I think so, because experience
will show me the time; from my general knowledge of the
tides, the ebb tide might sometimes run three knots, according
to the freshets or some other cause, may be stronger, and does 212
sometimes, but on this particular occasion it was pretty near
the last of the ebb.

While I was changing the direction of my boat I could not see whether the "Parker" was changing her course at all or not; I was watching the light to change the bearing, after he gave his two whistles before we collided, but it was over thirty seconds or less; somewheres about that neighborhood; thirty seconds or less; can't say exactly; all that time between the first whistle and the second I was making every effort to go to the right; going to the right as far as I could.

Q. Had you moved it ten feet?

A. I don't know what it was.

Q. Had you moved it any; was it any further to the right than when you heard the one whistle?

A. The tow? 213

Q. Yes.

A. Well, of course when I got the light to bear four points, of course I was moved four points.

I don't know how much distance I had made—how many yards I had made towards the starboard with my boat in going that four points; I had moved a little, of course—I don't know how many yards; I calculated on the points; I think I had moved, because I was going ahead all the time; I mean before he blew the two whistles; I had got around four points, three or four points; the distance I couldn't tell you.

Q. For instance, suppose you were a hundred yards from the Albany tow when he blew the one whistle, how many yards from the Albany tow would you be when the second whistle was blown?

A. A little more, perhaps about the same—I couldn't tell; that tow was drifting to the westward all the time, sir; the Albany tow was drifting to the westward very low down; I was trying to go the southward.

Q. You were trying to go to the east?

214 A. Yes, sir; no, according to the sun, I was trying to go to the west of the "Parker," of course; the Albany tow, the big tow that had the lot of canal boats, was drifting to the westward, coming up a little from the shore.

Q. After the first whistle, you ran on for half a minute, you trying to make as much way to the starboard as you could—what did you notice about the "Parker" and her tow—what way were they going?

A. I didn't notice which way the "Parker" and her tow were going until I got the whistles.

I watched the light to see whether I altered the bearing when
I got the two whistles. I threw my helm hard-aport; that is
all I did; I ported my helm when I got the whistle; if I hadn't
done so, when he blew his one whistle, they would not have
cleared some two or three boats' lengths from us; when we
215 came together we were nearly head on, including the boats—
schooner and canal boats; pretty near head on.

I was about right with the tide after the collision; then I was headed a little across the tide—headed a little to the shore—the New York shore—so that the tide might have been pressing against my port quarter a little; I was turned, then, in the same direction as before the whistle was blown; I was turned more to the New York shore, after I backed the boat; I did not see that there was any danger of a collision as early as the first whistle was sounded; at the time of the second whistle, I saw danger; we were then 200 yards apart.

With this tow it would take about half a minute or a little
more to stop going through water, without mentioning the
tide; we might go through the water 50 yards, and stop her in
the water—that is, going through the water—in slack water, I
216 mean; I did all I could to stop my boat on this occasion; when
we were 200 yards apart I rang my signal to the engineer to reverse the engine and shove her back before I gave the three
whistles; all I did after the second whistle was to try and stop
my boat; all I did after they gave me the first whistle, and
before I got the second, was to shove, as far as I could, to the
right; at the time of the collision, I had stopped going through
water; I don't know sure, but I had, though—the other boat
was not stopped; that was coming up against the tide; he was
going about five—four or five knots, sure, going through water.
I ain't speaking of the ground; we were both going through
the water, but not over the ground, you know.

I don't know anything about the "Parker"—don't know how large she is—don't know anything about her—no more than that I have seen her; I saw the vessel; I didn't think she was a lighter boat; she was a smaller hull, but I don't know how large an engine she has; I wasn't going 3 knots then, I was stopped; the "Parker" had a smaller tow than I had; I guess I was under way, but she had one schooner and I had four canal boats; when I had them under way, I don't think that the same number of revolutions of my boat, being a larger boat, would give me as much way through water as that tow 217 would in the same number of revolutions; I say that the two vessels were from 400 to 500 yards apart when the first whistle was sounded; I say from four to five; I don't agree with the Sergeant here, Maher, who thought they were 700 yards; he thought that, probably he didn't see it as well as I did maybe.

After the collision I watched this canal boat, the "Lee;" I looked after her once in a while back; it took quite a while before she got past her—clear of her bow; I saw the "Lee" after she was torn away; I remember the last time I saw her before she sank; she was then with her deck full of water; she was then about 100 yards away; I thought so; I said before that the "Lee" was four or five hundred yards when she went down; I didn't swear to that, though; I didn't swear positive; I testified to that, but at the same time I thought so; I don't think so now because I have been running up and down 218 there since; I have seen the "Minnesota" over there, and I thought that was about the distance; that is the reason I only said it; I couldn't swear to it; I didn't get the steamboat back to the rescue sooner, because I couldn't cast the tow away; I couldn't go back with the tow; she wouldn't carry it quickly against the tide, and she couldn't turn around quickly; I sent the small boat as quickly as possible; we were some 200 yards below that boat when she went down, because the schooner towed the boat some distance up; I think she sank further up the river than where the boat carried her; I am not sure; it seems so to me.

Nobody asked me to cast my lines back till after I was turned round; Mr. Cooper never did, till after they turned round; I did not hear Captain Cooper testify before; I don't know whether I said "to hell" or not; I could not say; I might, 219 or I might not; I do not remember saying to him, "my towboat might go to hell, for him or his family;" I know I did not say that; the whole breadth of my tow, including the whole boats, I should judge, to be ninety-five feet, or ninety feet; to clear it, it would take about a hundred feet; the tug was about nineteen feet; I stood at the wheel; I was surprised when I heard the two whistles, because I could see, if he blew me the two whistles, that he could never cross my bow; else it would not have called my attention; I say it was about a half a minute; I don't say it was a half a minute; I say "about" that; I had my helm then aport; I did not change it till they rung the bell, and then only let go of it; I say there were a good many vessels in the stream; some were sailing, some were anchored; I could not tell exactly which was which.

Our small boat was on the top of the house, in the davits, standing on the house; that is the most convenient place to have it, to launch it in a hurry—that is, where we have got to keep it, to have it out of our way; I ordered the launching of it, in the first place, but they had another boat handier; they
220 did not obey my orders when I told them to launch the boat; to have launched our boat would have taken us seven or eight minutes; it would have taken so long, because we would have had to cast the canal boat off adrift, that we had on the side, or carry the boat over her deck; we could not drop it on the stern of the canal boat—not from the davits; I did not have men enough on board to launch the boat without carrying her across; our boat was put there to be launched in case of necessity; it was not so put up but I could get it down off the deck, and overboard, if the canal boat had not been there, in three minutes, and short of three minutes; but, in consequence of the way the lines were arranged, it could not be launched before seven, or eight, or nine minutes; our boat had two sets of row locks; four men could row—two on each side; I do not know what speed they could make in the water; the
221 length of this small boat on the davits was about eighteen or nineteen feet.

I say to get that boat down would have taken longer than to get the one overboard that we did get overboard; to cast the lines off all round, would have taken two or three minutes, anyhow.

Cross-examined by Mr. Campbell:

I was bound to Port Morris to make up a tow, to go to New Haven and New London with it; Port Morris is up out of sight of the Gate, below Harlem; I have to go up the Gate—up the East River.

Q. Did you know it was your duty, in passing boats on the river generally, to go to the right on this line?

(Objected to. Objection sustained. Exception.)

222 I know the "Parker" now; I did not know her then; I have seen the other vessel that was going up the river with this tow, several times; the "Grant" was about 200 yards from the "Parker" when I blew the three whistles.

I was called as a witness at Auburn, on a trial of a case about this same matter; I testified there that I was not over three or lengths from the "Parker" when I blew the whistles; I did not see the "Parker" at all; I saw a schooner with a light on; when I saw this schooner I was about four or five hundred yards from the "Parker;" that was when he blew the first whistle; I saw her light before that; when I first saw her I was three or four hundred yards from her; I was convinced she was a vessel at anchor; I found she was not a vessel at anchor, when she blew the whistle ; I then knew there was a tug boat alongside of her ; I saw the steam from the whistle blowing ; that was the first whistle that was blown ; I calculated to run on the other side of him ; I was coming down so that I could run inside of him ; there was room enough ; I did not see any change in her course.

When the first whistle was sounded I was standing by the wheel steering the steamboat ; I was looking out ; I was looking out, but I did not turn the wheel until after the whistle was blown, and I looked out and turned the wheel so as to turn the head of the boat to the right ; after the three whistles I backed ; when the engine went back that turned her head to the left ; that brought her head nearer towards the schooner. 223

I did not, after the two whistles were blown, answer by two whistles ; I let go the wheel when I rang the bell to back ; when the "Parker" blew one whistle I answered it, and then, afterwards, she blew two, and I did not answer that ; I do not know that I should have kept my wheel aport, when he blew one whistle, and I answered it with one ; and he afterwards blew two, and I did not answer it ; the proper way was the way I did ; I say that it was the proper way to back my boat and turn her head to the left ; it did not turn her head towards the "Parker ;" it would turn that side towards the "Parker." 224

I testified at Auburn that I did not know whether my boat stopped or not till the collision took place ; I testified to the same thing here ; I think I saw a couple of men in the bow of the schooner, one of them did not halloo out to me and say, "Captain, why don't you back your boat ?" and I did not halloo out in reply, and say, "I cannot do it with the ebb tide, and with the tow I have." Nothing to that effect took place.

I don't know whether they asked me why I did not back my boat or not. I believe they did—I believe they hallooed for me to go back, and I think I answered as I could ; I did not tell Cooper that night that my mate was drunk ; he was not drunk ; I did not tell Cooper when he was up there in the boat with me—either in the wheel-house, or near there—that there was going to be a collision ; I told him that boat cannot clear me—when he blew the two whistles, and with that Cooper ran out of the pilot-house ; I saw that there was going to be a collision ; that was just when I got the second whistle. 225

I say I had the bow of my boat turned four or five points by turning the wheel a-port ; there are thirty-two points in the compass.

By Mr. Benedict :

I had on the "Grant" a bright light, a green light on the side, and two vertical lights on the flag-staff ; I saw them ; my boat was making about three miles an hour ; I judged the "Parker" was making about five ; I had a fair tide.

Leroy Rogers, sworn:

I live in Trenton, New Jersey; my business is boating; I have been running a canal boat about twenty-four years; I was captain of the "Coalport;" she was 153 tons; I had on her that night about three hundred tons, perhaps a few tons over, perhaps a few less; that is her load; three hundred; she is twenty-two feet wide, besides the guards on each side; they are six inches; she is 105 feet long; she was loaded with coal. 226

My boat was fastened alongside the "Grant" on this night of the collision; just before the collision, I was putting in fenders betwixt my boat and the tug; some of the men off the tug were with me; I don't know who—one or two of them; that was forward of the—well, it was forward; it was about abreast of the wheel-house, a little forward of the wheel-house.

My attention was first attracted because I heard a whistle; then I heard one overhead; then I looked to see; I saw a vessel a long distance ahead; I did not notice any lights; I did not notice the lights at all; that vessel seemed to be right square ahead of us; I could not tell how far off she was, but she was a pretty good, long distance; she was so far off, I concluded there was no danger but we should get clear of her, and I went to work again, putting my fenders on; I heard whistles 227 after that; I heard a couple of whistles ahead, and then I heard three from the "Grant;" I heard bells struck, I heard her strike "stop," and "go back," from the "Grant," and the engine stopped, and commenced to work again; when I first heard the first whistle, the tow appeared to be heading right up the river; our tow was going down as usual; I heard the two whistles, and the "Grant" answered by three; I understood what that meant: "look out for danger;" I did look out out; I jumped right on the middle of the hatch, and there I stood until the collision took place; when I looked ahead, I saw this vessel coming right at us; she was just as before; she was in pretty much the same position as when I first saw her; perhaps the other vessel might have been one hundred and fifty or two hundred feet away when the second or third whistles were blown.

228 I did not notice the Albany tow until after the collision; it was on the side; I could not see across; I noticed the frigate "Minnesota" on that side; I should suppose we were about six hundred feet away from her as we were going down the river; I noticed the Albany tow after the collision; I merely saw her off the stern; I could not tell how far off, or how near she was to us; the vessels struck pretty much head on—a little on the slack—pointing a little out-ways; the blow knocked the boat adrift; her bow swung aft.

After the collision, I jumped right on forward; tore the bow hatch off to see if the water was coming in; she hit me pretty hard; and then I came out again; when I came out again, I think there were a couple of men unhitching my boat to take her over, and I think I took hold of the hitch and helped them, and a man came and pushed her off; I think I went to get the oars of that boat—they were right forward of my deck; I suppose if I had caught right hold of my boat before I went down, she might have been got down a minute before; probably I was not down a minute there before I was back again; this canal boat was fastened to my boat, too, and those lines parted, but 229 whether they ran right over from the "Lee" to the steamboat, I cannot say; I know, when the boat sank, I did not see her sink; I heard the women screaming; I heard when it stopped; I am not able to say where the small boat then was; from the time of that collision until the screaming that I heard stopped, I think was inside of five minutes; it is pretty hard judging time in such a case as that; five minutes is a good while to hear anybody screaming for their lives.

The "Grant," with her tow, paddled around there a spell; I did not hear Captain Cooper make any request to the captain of the "Grant" to cut the tow loose; I did not hear him say anything about cutting the tow.

Cross-exam.:

I said I made a statement; I made a statement of how the 230 thing happened; I don't know who I gave it to; it was some New York man—I guess it was, he came on to Trenton, and I gave him a written statement; he has shown it to me since I have been here. I don't know as I can point him out.

The schooner struck me right on the bluff of her bow; the chain-bolts took my side, and cut my fenders on my starboard bow; they struck pretty nearly head on; if there was an angle, it was running off from me towards the "Lee;" it was not much of an angle; when I heard the third whistle, I looked out; then I saw the "Parker" dead ahead again.

By Mr. Cooke.—Some man here showed me the statement I made; I don't know who it was.

The small boat that was put afloat carries three men, and is entirely steady in a flat sea: my son is on board the boat; she is at Norwich Conn.; I do not know that he refused to go in 231 the boat himself, because it was so small, nor because it was not able to hold two; I told him, myself to get out; he is a heavier man than myself—weighs over two hundred; says I, "One man is enough."

Besides my boat, there was a Reading Railroad boat, and there was a boat called the "Howard Parker," I think; they were loaded with coal also; I could not say how much coal there was in those boats; my boat was twenty-two feet wide, and one hundred and five feet long.

Gilbert O. Smith, sworn:

I am a Sergeant of the Municipal Police, New York City; on the 9th of October, I held the rank of an acting sergeant; I was at the station house on the 9th of October; I remember Captain Cooper coming in there that night; he made a statement to me at the time, with reference to the sinking of his boat; I recollect what statement he made to me, he stated that he was run into; that his coal barge or canal boat was run into by an unknown schooner, and she was instantly sunk. I asked him if he had no opportunity to save his family, and he stated that 223 when she sank he merely had time to take his daughter and jump on the adjoining boat.

I asked him if he had an opportunity to save anything else on the boat, and he said, "No; that she went down instantly."

There were no changes made, or anything else said at all, only in reference to what I have written in the blotter there, in reference to the accident; that is all that occurred in the station house; he made no statement in reference to who was to blame, or anything of the kind.

(The Counsel for Eastern Line here offered in evidence the entry in the police blotter.

Counsel for Austin objected to same as irrelevant and illegal evidence. Objection overruled. Exception, and 233 same read as follows:)

"Collision. At 11 P. M., Hobart Cooper, captain of the 'N. "L. Lee,' reports, while in tow of the tug 'U. S. Grant' off "the Battery, off Pier 1, North River, was run over by an un-"known schooner, and instantly sunk; the captain's wife and "child were drowned, he saving his eldest daughter; the cap-"tain stating that he could be found at the Italian School in "the Five Points. H. Hobart Cooper, Fulton, New York."

William D. Jones, sworn:

Examined by Mr. Benedict:

I am a lawyer and notary public, and have been in the office of defendant's attorneys a good many years; I remember Captain Cooper coming into our office in October about this matter; Mr. Coffin came with him; Capt. Cooper made an application 234 to me then to prepare a protest; I got the facts to prepare that protest from Captain Cooper, and from a statement that Mr. Coffin brought with him when he came in; I didn't prepare the protest when he was there the first time; he came back again; the second time he came back I had prepared the protest; I read the protest over to him; he made some objection—seemed to think it wasn't exactly accurate.

Paper shown witness.

That is the paper; at that time I marked out the points that he objected to; I read to him in relation to the whistles, as follows: "That while the said tugs were a distance apart, said "'John M. Parker' blew one blast of her whistle, which was "immediately answered by one blast from the 'Grant;' and "said tugs continued on their course in a direction to pass each "other in safety on the port-hand, and that after continuing "on such course for the space of about three minutes, the said "'Parker,' suddenly and unexpectedly, gave two blasts of her "whistle, as an indication that she then intended to pass on "the starboard hand of the 'Grant,' and she accordingly "changed her course for that purpose; that the 'Grant' immediately sounded three blasts of her whistle, reversed her 235 "engine, stopped, backed, and continued to back, until after "the collision."

Captain Cooper made no request to me then to change that statement; I made the corrections he suggested, and copied them; after the corrections were made, and he left the office that time, I understood that he was to come in again and sign the protest—the one that had been corrected; I don't think he came in again.

I heard the testimony of Mr. Patterson, the engineer; I remember Mr. Patterson coming into our office about this matter; questions were put to him by you in relation to this collision—this occurrence; I took his statement down in writing; the answers which he gave, and the questions which you put; he signed the paper after I had taken them down. (Paper shown witness.) That is his signature; he swore to it before me the 236 27th day of January, 1876.

Mr. Patterson, in answer to your questions on that occasion, testified that he heard the "Parker" blow one whistle, and the "Grant" answered, and immediately, then, the "Parker" blew two, then the "Grant" three.

Cross-examined by Mr. Cooke:

I think it was on Monday that Cooper came in and talked to me about the protest—he, with Coffin; it was the Monday after the collision, so, I suppose, Monday, the 11th; the collision was on the 9th; Mr. Coffin came in with him about noon, I should think; I knew Mr. Coffin; he was Secretary of the Eastern Transportation Line; we were their counsel at that time; he came in to us as his counsel, I suppose; I said about noon—that is as near as I can remember; I don't think they came 237 in a second time that day; the next day, or the next day but one, they came in again together; I think Mr. Coffin came with him; I have not got the paper that Mr. Coffin brought, from which I made the statement; I don't think I kept it; I can't say positively, but I understood it was in Mr. Coffin's handwriting; I took it and looked it over; then I asked certain questions of Captain Cooper; I have that statement that I drew up and read to Captain Cooper; I read it to him; it must have been on the second day; I employed the time between the first and second visit in preparing it.

(Paper produced.)

Counsel—Now, I propose to read this paper; they haven't read it. (Reads:) Protest marked "A."

UNITED STATES OF AMERICA,
City, County and State of New York, ss:

To all to whom these presents shall come, or may concern.

238 I, William D. Jones, a notary public in and for the State of New York, duly commissioned and sworn, and dwelling in the city of Brooklyn.

GREETING: Know ye, that on this day of October, 1875, before me, the said notary, personally appeared Henry H. Cooper, to me known, master of the canal-boat, "N. L. Lee," and requires me, the said notary, to make his protest; and the said Cooper, being by me duly sworn, voluntarily, freely and solemnly declares and deposes as follows:

That on the 9th day of October, 1875, at about half-past ten o'clock at night, the canal-boat, "N. L. Lee," in all respects sound and seaworthy, loaded with a cargo of coal, under the command of this appearer, was taken in tow at what is known as the Stakes, between Hoboken and Jersey City, in the State 239 of New Jersey, with three other canal-boats, by the steam-tug, "U. S. Grant," to be towed to the port of New Haven, Connecticut; the said "N. L. Lee" being the outside boat on the starboard side of the said tug, there being two boats on each side of said tug. That at the time the tide was running ebb, and the night was a bright moonlight night, and objects on the water could be seen a long distance.

That the tow of the "U. S. Grant" was made up in the usual manner, and the boats were securely and properly made fast.

That after leaving the Stakes, the said tug, with her tow, proceeded on her course down the river, in a direction to pass between the New York shore and the United States ship "Minnesota," then lying at anchor in the stream, about opposite to and a long way out from the upper end of the Battery, with 240 her stern tailing down the river; the course of the said tug being nearer to said ship than to the shore.

That while said tug was yet some distance above the said ship "Minnesota," those in charge of the said tug "U. S. Grant," and also this appearer who was then in the pilot-house of the said "U. S. Grant," discovered the steam of a tug and her white light, *the tug having in tow a schooner made fast to her on the starboard side, with her bow projecting beyond the bow of the said tug, which tug afterwards* proved to be the "John N. Parker," crossing below the stern of the said ship "Minnesota," on a course angling somewhat towards the New York shore, and across the course of the "U. S. Grant," bound up the river to catch the tow of a steam-tug proceeding up and inside of the "Grant," and near to the piers on the New York side.

That said tug "Parker" had in tow a schooner on her starboard side, her bow projecting beyond the bow of the said tug.

That while said tugs were a long distance apart, the said "John N. Parker" blew one blast of her whistle, which was immediately answered by one blast from the "U. S. Grant," and the said tugs continued on their courses, in a direction to pass each other in safety on the port hand, *which they would have done but for the wrongful acts of the "John N. Parker,"* 241
hereinafter mentioned.

That after continuing on such courses for the space of about three minutes, the said "John N. Parker" suddenly *and* unexpectedly, *and wrongfully,* gave two blasts of her whistle, as an indication that she then intended to pass on the starboard hand of the "U. S. Grant," and she accordingly changed her course for that purpose. That the "U. S. Grant" then immediately sounded three blasts of her whistle, and reversed her engine, and stopped, and backed, and continued to back till after the collision.

That when the said "John N. Parker" sounded the said two blasts of her whistle, and changed her course, the said tugs were so near each other, (*the said "Grant" having relied upon the one blast of the whistle from the "Parker" as indicating her intention of passing to the port*), that it was then impossi- 242
ble for the "Grant" to change her course in time to pass to the starboard of the "Parker," and she could do nothing but blow the three warning blasts of her whistle, and stop, and back, which she did, to which three blasts the said "Parker" gave no heed. That the said "Parker," persisting in her *wrongful* intention of passing on the starboard hand of the "Grant," ran the said schooner, which she was towing on her starboard side, at full speed into the bluff of the bow of the said canal boat of this appearer, breaking all her lines and cutting her adrift, and doing her such serious injury that she *almost immediately* sank in about twenty minutes, with all her cargo on board, the said tug continuing on her course, without waiting to ascertain what damage had been done to said canal boat.

That at the time the said tug-boat "John N. Parker" blew the said two blasts of her whistle, this appearer was in the pilot- 243
house assisting to steer the "Grant," but on hearing the said two whistles, apprehending a collision by this sudden, *wrongful,* and unexpected movement on the part of the "Parker," he immediately left said pilot-house, and hastened to his boat to look after his wife and two children, who were on board of her, and to take them off, but before he could do so the collision occurred, and his wife and one child were drowned, he succeeding by great effort in saving the other of his children.

That the said collision was the result of the gross and culpable and criminal recklessness and carelessness of those in charge of and navigating the "John N. Parker," in blowing said two whistles, and in changing her course to pass to the starboard of the "Grant," when said tugs were so near each *other, and when such a change as they could and should have seen, would render a collision inevitable, and in not stopping and backing when the three whistles from the "Grant" were sounded.*

That everything was done on the part of those on board of and in charge of the "Grant" to prevent said collision and to save said canal boat that could be done, and the said collision 244 *was not caused by any negligence or carelessness on the part of those on board of and in charge of the "Grant," but the same was solely attributabte to the wrongful acts of those in charge of and navigating the said "John N. Parker."*

And the said Cooper now requires me, the said notary, to make his protest, and this public act thereof, that the same may serve and be of full force and virtue as of right shall appertain.

Wherefore the said Cooper and I, the said notary, do by these presents publically and solemnly protest against all *the said wrongful acts of the said tug "John N. Parker," and those in charge of and navigating her at the time of the collision hereinbefore set forth, and also against* loss and damage, and costs and charges and expenses to which he may be put by reason of the (collision)—*said wrongful acts aforesaid,* herein set 245 forth.

Thus done and protested at the City of New York, this day of October, in the year one thousand eight hundred and seventy-five.

In witness whereof, as well as the said appearer, I, the said notary, have hereunto set my hand and seal of office, the day and year last above written.

Sworn to before me, this }
day of October, 1875. }

(The words printed in italics in the above protest, were stricken out with blue pencil, when read over to Cooper.)

Mr. Cooke.—I propose now to read the affidavit of Silas Patterson.

246 *Mr. Benedict.*—Note my exception.

City and County of New York, ss:

Silas Patterson, being duly sworn, says: I was engineer on board of the "Parker" at the time of the collision; I was in the engine-room at the time of the collision; did not see the collision; I saw the "Grant" before the collision; she was then heading down the river; all the lights I noticed were the two white lights on the flagstaff; I was then standing in the engine room with my head out over the half door on the port side, looking up the river; in my judgment the "Grant" was then 350 feet away; I had not heard any whistles from either of the boats then; after I first saw these lights, it was about two or three seconds before I heard any whistle; I heard the "Parker" blow one whistle, and the "Grant" answered it immediately; then the "Parker" blew two, and then the "Grant" three.

After one whistle from the "Grant" in answer to one whistle from the "Parker," the "Parker blew the two whistles right away.

After the "Grant" answered the one whistle, then the four
bells on the "Parker" were rung right along in succession to 287
slow, stop and back; at the time of the collision the engine
was working back; the "Parker" and her tow had not got stern
way on her at the time of the collision, but were going ahead;
the engine had made about half a dozen turns back.

As soon as I got the bells to slow, stop and back, I went into the engine room to work the engine; I had been standing looking over the half door with my hand on the lever.

I did not see the "Grant" after I went entirely in the engine room.

I felt the collision; it parted the tow line we had to the schooner; the "Parker" continued right on her course; I live at 22 Beach St., N. Y.

SILAS PATTERSON.

Sworn to before me, this 27th day of January, 1876. 288

WM. D. JONES,

Notary Public for Kings and N. Y. Counties.

Witness continues:

I don't know at whose suggestion this clause was inserted:
"That the collision was the result of the gross, culpable and
"criminal recklessness and carelessness of those in charge and
"and navigating the 'John N. Parker;' I couldn't say that it
"was the suggestion of Captain Cooper, or that it was the suggestion of Mr. Coffin; I may have put it at my own suggestion; I couldn't say at whose suggestion this was put in: "That
"everything was done on the part of those on board of and in
"charge of the 'Grant,' to prevent such collision and save said
"canal boat, that could be done, and said collision was not 249
"caused by any negligence or carelessness on the part of those
"on board of or in charge of the 'Grant,' but the same was
"solely attributable to the wrongful acts of those in charge of
"and navigating said 'J. N. Parker';" I couldn't tell you who stated that to me; I talked with Cooper about it, and I also talked with Coffin about it; I can't tell whether I got that from the paper of Coffin or from Coffin.

Cross-examined by Mr. Campbell:

I was one of the counsel at this time of the Eastern Line; I was not one of Mr. Cooper's counsel; I should think Mr. Coffin first spoke about drawing this protest; I know the nature of the protest; I draw them often for parties that claim they have suffered an injury from some cause or other, and want to make a statement; there was no use for the Eastern Line making a protest; I don't think they had suffered any injury; they made no claim for any injury by the 'Parker' against them.

Q. There was no use therefore for any protest on their part, 250 was there?

A. Well, that I can't say, I am sure; they probably had use for it, or else they wouldn't want it; I presume they wanted to get a statement of the fact from Captain Cooper.

Q. And they did it under the pretence that he ought to have a protest made, wasn't that it?

A. I don't know whether they did under that pretence or not; my understanding was that they desired to know from Mr. Cooper what the facts were, so as to put them in a permanent form.

I don't recollect that there was anything said in relation to there being any insurance claimed; Captain Cooper, at the time when he was in first, seemed somewhat affected with grief—cried once or twice, while talking about it; I did not know Capt. Cooper was coming there for me to draw the paper until 251 he came; Mr. Coffin brought him.

Charles Bloomburg, sworn.

Exam. by Mr. Benedict:

I live in Philadelphia, and my business is that of boatman; I have followed the water in various ways for perhaps thirty-five years; I have been a canal boat captain of that time, I should say twenty years, perhaps; I was in command on the night of the collision of the canal boat "Philadelphia" and Reading R. R. No. 25; she was placed in the tow on the port-side—outside of another boat—the outside boat on the left-hand side; I was on the deck of my boat as the tow was going down the river in the "Grant's" tow; my boat was in the tow of the "U. S. Grant;" I was on my deck near amidships; what 252 first attracted my attention to the "Parker" and her tow, was this; I heard the whistle; heard one whistle; at that time the "Grant" was moving near parallel with the river; I had not seen the "Parker" before I heard the whistle; I had seen lights before this; I saw a light on the schooner, a bright clear light; I know what kind of a light is usually called an anchor light; this was such a light as that; when the one whistle was heard, I knew where it came from; that light in reference to the "Grant" and her tow, was nearly ahead in a direct line down the river.

On hearing that whistle, the "Grant" was sheered to the westward—sheered off to the right; she answered the whistle; she blowed one whistle, then she sheered off to the right; half a minute, or a minute after that, I heard from the "Parker" two blasts; the "Grant" answered those two blasts with three blasts; they rang four bells on the "Grant;" I heard the bells ring—four bells; I understood what they meant; that meant slow the engine, stop, and go back; I couldn't see whether that was done or not; when the "Parker" blew the two whistles, I suppose she was away 300 feet, perhaps; I understood what the three whistles from the "Grant" meant, and what the two whistles from the "Parker" meant. 253

The "Grant" sheered her tow off to the right at the time of the first whistle; the "Parker" blew two whistles, and I suppose asked to go on the starboard side of the "Grant," and, of course, that made both boats sheer the same way—that is, I mean to say, to bring them afoul of each other, one to the left, and the other to the right; the "Parker" came up with the schooner; they were coming about in this course: (witness illustrated); this was the "Grant," and this was the "Parker;" the stern of the schooner being a little nearer towards me than her bow, or, in other words, putting the stern of the schooner a little nearer the New York side; I did not see what the effect was on the tow; I heard the crash; I saw that it broke the "Lee" adrift; I did not leave my boat then.

I stood by my boat until I saw the tug; the schooner was all clear, and also the barge, "N. L. Lee;" I looked over the stern 254 of my boat, or rather over the stern of the tug, and saw the "Lee's" light in the cabin, and also saw the hull, but she was nearly across the river, heading to the westward, and inclined down the river, I thought; I saw she was all clear, then I went across to the other side, on the "Coalport."

Just at that time a small boat left the side of the "Coalport," and proceeded towards the wreck, but the wreck disappeared before the boat got to her; in the meantime the "Grant" was turning round as fast as possible; of course I couldn't say how fast she could turn, but I thought they were doing what they could to get her around, but before the "Grant" got fairly up the stream the boat had disappeared; I saw the boat of the "Coalport," I speak of; I noticed the boat on the davits of the "Grant;" of those two boats, the boat on the "Coalport" could be got out quicker, decidedly. 255

I did not hear any request on the part of captain Cooper to the captain of the "Grant," to cut his tow loose; at the time when she sank, I should think the "Lee" was three hundred feet from the tow of the "Grant;" I couldn't tell exactly; I should think she was about that, though; I have seen canal boats cast off, very often, and helped to do it very often.

Q. Supposing the "Grant" had cast the tow off, which could have been done quickest, to get around with the "Grant" in that way, or to get the "Coalport's" boat, as was done?

A. Get the "Coalport's" boat in half the time.

My boat registered, if I remember right, 120 tons; I had on board of her 225 tons of coal; the tow was made up of two boats abreast on each side, and it seems to me the two heaviest boats were on the starboard side · the stems of the boats, with reference to the stem of the "Grant," were, I should think, 20 feet ahead of her bows; the canal boats were 20 feet ahead of the bow of the tug, I think.

Q. Is it the custom for canal boats being towed as the "Grant" had them that night, to have red and green side 256 lights?

Objected to by the counsel for defendant Austin, as immaterial and irrelevant, and illegal.

Objection overruled. Exception.

A. It is not the custom; it is not required.

Q. Is it the custom for a canal boat towed as the "Lee" was, to carry any lights at all?

Same objection by same defendant; same ruling; same exception.

A. It is not.

Q. Is it customary for a canal boat to have a light up when towing aside of a tug?

257 Same objection; same ruling; same exception as to last question.

A. It is not.

Cross-exam. by Mr. Cook:

The length of my boat was about a hundred feet, probably 101; she was seventeen feet and a half wide; depth of hold about seven feet and a half, from that to eight feet; I had twice the registered tonnage aboard nearly; she was out of water, I suppose, 18 or 20 inches in the middle; a little more at each end, not a great deal, she was near straight on deck; inside of my boat there was a boat called the "Howard Packer;" I don't know the Captain's name; I don't know that he is here; I do not know him; his boat was just the same as mine; the same 258 size boat; no perceptible difference in the width; same width; she may have been a little deeper in the water, I don't know how much she carried.

I was taken in tow at a place known by boatmen as "The Stakes," at Jersey City; the "Lee" and my boat lay there together; one of the other boats taken in, I think, was taken there; the "Coalport;" I think she was taken there, and the other, I think, was taken up at Morgan Street; was there when we hauled out.

I have been in the habit of being towed a good many years; I have navigated a steamboat; I had charge of a steamboat, not a tug-boat, a trade boat; I never did any towing with a tug-boat, but with a steamboat that I had charge of, I towed a boat

once in a while; I didn't make a practice of it; generally they
take a tow alongside when they come round to go up the East
River; must have them alongside, so they can control them.

I don't think it would do very well to put this tow all on one
side to take it; I shouldn't suppose a steamboat would handle
them very well then; they would all pull one way, and turn
the boat round, perhaps; I should not think they would work
as well that way; I never tried it, and I shouldn't think any 259
sensible man would; the true way is to get the medium; have
the weights equalized on both sides as near as possible; it
cannot be done at all times.

I found out that the two boats on the left were lighter than
the two on the right, in this way: the "Coalport," I know she
is a heavy boat; then I lay alongside of the "Lee" all day
previous to this occurrence, and I found that she was a heavier
boat than mine; I did not say anything to the captain when he
was towing them up or taking them, to the effect that one
heavier boat ought to be on one side, and the other on the
other; I did not; we never interfere with the captains of the
tug; I did not speak about it to him any time, or to anybody
else any time, about the starboard tow being the heaviest, I
think; I couldn't say when was the first time I ever spoke about
that; I don't really know whether I did before I got here or 260
not; I don't know that I should now, only I have been asked
the question; I think I have heard it mentioned here since I
have been here; I had no talks with Williams about it; I don't
know that I talked to anybody about it; I may have made
some remarks about it to the counsel; I guess I did, perhaps;
the first day I came here, Tuesday, I guess, it was, Mr. Benedict
asked me how these boats compared with each other; I
think there was some such conversation; I think Captain
Williams was not present when that conversation took place.

I estimate that this light that I saw on the schooner ahead,
when the first whistle blew was from four to five hundred
yards, probably four hundred and fifty; I couldn't measure
the distance exactly, when the two whistles blew, I guess it
was about three hundred feet, not more, I should think—that
is, a hundred yards; when she blew the two whistles, the 261
schooner was headed towards our tow, as near as I could make
out; it was night, and we couldn't tell well; I was in such a
position that the schooner prevented me from seeing the tug
even if it had been in the day-time; the schooner was between
us and the tug.

I saw the "Minnesota" at the same time; that was rather
below us and near abreast of us; it bore over our starboard
side, or starboard bow rather; I suppose eight or nine points
to starboard—ten points, perhaps; that was when the two
whistles blew; I suppose I was perhaps a couple of hundred
yards above, up the stream, from the "Minnesota;" I stood
about amidships on my boat; in looking across, I was some

wheres about the forward end of the steam-tug's house; I could look right straight across the forward end of the steamboat; looking straight across the end of her house I could see the "Minnesota."

When the two whistles were blown, I was right abreast of the Albany tow at that time, perhaps about the middle of it; I should think from two to three hundred feet away from it; two 262 hundred and fifty, perhaps; I was not in the same position then that I was when the one whistle was blown; we were headed more to the westward, then; I should think all of three points; I had no way of knowing exactly.

When we came up from the "Stakes," we came over to the New York shore partially—rather down.

Q. Came in towards the Albany tow?

A. Well, I suppose we were, according to the way we made the Albany tow.

I judge from the way we finally made her; I don't know anything about the distance from the "Stakes" to where the Albany tow was; I couldn't give a very accurate idea of that, I did not notice whether the schooner changed her course after she blew her two whistles; I did not notice that she changed her course at all.

263 When I first saw this light, it was nearly ahead; I did not notice whether it bore either way; we were steering down pretty near to it; I supposed it was a schooner anchored; after I heard the whistles I knew there must be a tug-boat too; I saw the smoke of the "Parker" when it came to the second whistle; at the first she was rather far off; when it came to the second whistle, I could see the smoke there; I could see the smoke rising up behind, over the schooner, exactly; I should think it was three seconds between the blowing of the two whistles from the "Parker" and the three from the "Grant."

I suppose half a minute, perhaps, after that, before the collision; when I saw this "Lee," she was turned around, her stern sheered in towards the Albany tow; the last I saw of her she lay crossways of the river, rather inclined down; I couldn't say exactly how many minutes I had been coming over there from Jersey, from the "Stakes," until the time I ran afoul, 264 perhaps fifteen minutes, a pretty strong ebb tide then.

I am pretty well acquainted with the waters around New York; it was a full ebb tide, regular ebb tide; there was nothing in sight that I remember, except that we may have slowed down for a ferry-boat, perhaps, to cross our bow; I don't remember doing it; I didn't notice turning aside or whistling for anything else; I couldn't say there was no signal given by way of a whistle; I don't recollect whether there was or not.

Cross-examined by Mr. Campbell:

When these three whistles were blown by the "Grant," I suppose it was a couple of hundred feet, two or three hundred feet between the boats; I should suppose it was about half a minute after those three whistles before the collision took place, something like that.

When the first whistle was sounded, the "Grant" was running near towards the schooner; she was running head towards her, head and head; if she had kept on just as she was running, she would have hit the schooner. 265

The two heaviest boats in the tow were on the starboard side; that wasn't the proper way; I say that is not the way to make up a tow, if he has an opportunity to make it any better; it is the captain's duty to make up the tow for the boats that he is towing; it was the captain's duty in this case to make up the tow; he could make it up as he pleased, but he couldn't make it up as they were placed; he hadn't room to do it; he had room to go across the river, but he couldn't change them all around; it is a good deal of trouble, you know, and liable to take time to get the boats in position; what prevented him from putting them in the right position, was that they didn't lay in the right position.

Q. Shouldn't he have laid them in the right position?

A. Well, I should think not, because it was some trouble, and then the boats lay in such a way—he could have done it; 266
by taking time, he could; I would not say there was any particular cause of hurry; I know of none.

It would have taken longer to cast off the lines of the tow and get the tug back than it would to launch that boat from the "Coalport," twice as long; I couldn't say how many minutes it would take; that would depend upon how much of a crew they could muster to get to work.

The Court.—How long would it take to throw a line overboard?

A. A man could throw a line off in half a minute.

I don't know how many lines there are to the tug; I think they could launch that boat quicker than they could the one on the davits of the tug, because that boat was there on deck, and they could just slide it over; the boat that was on the 267
"Grant" was swung upon the upper deck, held on board hitched on with tackles, so as to let it down in case they needed it; it would have to be shoved a little this way; they could not let it down with the tackle, because they would let it right down on to the steamboat's upper deck.

The Court.—Suppose they had lowered it from that?

A. Well, they would have lowered it on to the barge's deck.

I don't think the stern of the tug extended far enough back to clear; it extended ten or fifteen feet, perhaps; I don't know the exact position of the davits; the steamboat was as long as mine; that would be twenty feet, the steamboat projected back twenty feet—reached the davits, but the davits are not right by the stern; I don't know how near to the stern they did come; I suppose 25 or 30 feet, perhaps; I couldn't say, never noticed it particularly; it would have taken, to have got that boat overboard, five minutes, I suppose; I don't know that it would, but it couldn't have been done in less than that; the sergeant on the "Minnesota" told us a boat could 268 have been got out in half a minute, but they have rather more men on the "Minnesota" than they do on a canal or tugboat; six men would be as many as could work around this boat; if they had six men, those six men could do it as quick as ten; they couldn't do it in less than five minutes, I think, on account of the "Coalport" being in the way.

By Mr. Campbell:

When this first whistle was sounded by the "Parker," the "Grant" sounded her reply almost instantly; the "Parker" did not sound her two whistles almost instantly after the one whistle of the "Grant;" it was a minute or more afterwards.

When the two whistles of the "Parker" were sounded, the "Grant" and the "Parker" were, I guess, perhaps two hundred yards—150 to 200 yards apart; I said yards I think; I 269 didn't mean to say feet; we were speaking of the Albany tow then, and I said from two to three hundred feet.

Mr. Cooke:

Now, do you mean two or three hundred yards, or two or three hundred feet?

A. I say I should think about 200 yards—from 150 to 200; I say about 200 yards apart, when the two whistles were blown.

I don't mean to say from sixty to a hundred yards, I thought we were talking about the Albany tow that time.

By Mr. Benedict:

I should think it was from seven to nine minutes from the time of the collision until the boat sank; the moon was about an hour high, but was partially obscured by clouds, a starlight 270 night over-head, and clouded round the horizon; it was not light enough to read the signs in Jersey City, as we went along down by the Albany tow; from where we were, you couldn't do that in the daytime.

By Mr. Cooke:

I saw the boat "Lee" that sunk; I saw it go down.

Q. How near to the Albany tow?

A. Well, I guess not more than a hundred feet from the Albany tow.

I didn't measure the distance, exactly; I would be only guessing at it; while the vessel lay there in a sinking condition, I didn't see the woman and child on board; I heard the screams of the woman, though; I heard them, but didn't see them; it was dark, and I couldn't see them, and we so far off; I saw how she went down partially; I saw her bow when it dipped; I saw there was a light in the cabin, and I saw when that disappeared; I couldn't see the cabin itself, exactly, about where it was, because it was night; we could see the outline of the boat; we couldn't see it plainly; we could see the outline of it; we could see something on the boat, of course; we could see an object on the boat; I didn't see the woman standing up 271 at the door of the companionway; I hadn't seen her at all.

Charles Hicks, sworn:

I live in Jersey City, and am a boatman; have followed the water 12 or 14 years; I was the mate of the "U. S. Grant" at this time; I remember this collision; as the tow was going down the river by the Albany tow, I was down on the forward deck; I saw the light that proved to be on the schooner; a bright light: I heard the whistle—the first whistle: when that whistle was blown, that light was right ahead; I should say I was five or six hundred yards away; I couldn't tell exactly; the "Grant" made answer by one whistle; I saw a change in her course; I saw her swing to the starboard—swing to the westward.

272 I next heard two whistles from the steamboat below; I understood what that meant; it meant change the course, and go to the left; the answer made from the "Grant" to those two whistles was three whistles; I understood what that meant; it was a signal of danger, stop and back; at the time these three whistles were blown, I was in the pilot-house; I went into the pilot-house at the time the two whistles were blown on the "Parker;" four bells and the jingle bell were rung on the "Grant" in answer to those bells; the boat stopped working, and then commenced to work again; at the time the two whistles were blown, the "Parker" was about 150 to 250 yards away from us, I suppose; when the two vessels came together, the "Parker" and schooner were headed a little to the westward.

After the collision, we commenced getting a boat ready to go over and pick up the woman on the canal boat; the captain 273 sung out to me to get our boat down, and I answered that I had a boat from the "Coalport;" we launched it, and I got a deck-hand to go in it, and he went to the rescue of the family; I went on the "Coalport's" deck immediately after they struck; as soon as I could get out of the pilot-house, I started and went up on the deck; I don't suppose it took me half a minute; I went on the "Coalport's" deck to see whether the parties got off or not, and about that time the "Lee" had broken adrift and swung up the river; the stern line held her for a moment.

I knew there was a small boat on the "Coalport's" deck; I took that boat in preference to the boat of the "Grant," because it was the quickest to be done: we could have launched that boat, and got it up a great deal quicker than to lower our own boat—to carry it over the "Coalport," or to swing it to our own stern.

I couldn't exactly see the boat when it sank, but I saw when the light went out; I think that was distant from the "Grant" about four or five boats' lengths; after the collision the "Grant" was turning as quick as could be done—she was trying to turn around; she turned around and went up to the place; I saw one 274 or two other boats; our boat had gone ahead, been up there, and reported that he couldn't see anything but floating pieces of wood; that must have been about the time the man-of-war's boat came; our deck-hand was in our boat; his name is Peter Svendsen; he is in Europe, I believe.

I was not under the influence of liquor that night in any degree; I had not been ashore that night; during the night we had been all around; met our agents around the harbor; I had been at work around the harbor all that evening, and through the afternoon, except in getting coal up; getting stores on board; I had not drank any liquor that night at all.

I took notice of the "Minnesota;" I presume we were four or five hundred yards from the "Minnesota;" I mean at the time of the collision.

275 *Cross-examination by Mr. Cook:*

I had been on the "Coalport" until the collision; I was on board the steamboat trying to get a fender in between the steamboat and the "Coalport" before the first whistle; the deck-hand was there helping me; I quit work there, putting in that fender when the two whistles were blown; I was at work from before the first whistle, up until after the second whistle, trying to get that fender in.

I did not particularly notice the light of the schooner before the first whistle; a great many lights were up; I hadn't particularly noticed this tow below at that time; from the "Stakes" to where the accident happened is very near a mile—three-quarters of a mile; the river is about a mile wide there; we had gone down stream, I suppose, on a line; we were half a mile further down than the "Stakes," and across the river substantially; 276 I presume it was from where the accident happened to the "Stakes," it was a little more than across the river.

I think I was on the forward deck of the steamboat when the two whistles were blown; that is, when I first saw the light of the schooner; I started immediately to the pilot-house, and at that time the tows were 150 or 200 yards apart, or somewhere about that; that is the first I had discovered of that light; the first I took any notice—I didn't take particular notice; when I saw the steam, then I thought it was a steamboat; I saw the steam when the two whistles were blown; I didn't take particular notice; I didn't know what it was; there was a bright light; the first whistle didn't attract my attention particularly; then the two whistles were blown, and I saw the light; it was ahead of us ; then we were facing each other ; the two boats seemed to be pointed towards each other that moment.

In trying to put the fender in, I discovered that the bow of the boat was thrown around so that I could not get it in after I heard the first whistle ; I knew from that fact that he had ported his helm ; the effect of it was to crowd up the boat against the "Coalport ;" Captain Williams, when the two whistles came to him, blew three whistles, and stopped, and backed ; I 277 couldn't say whether he gave the bells before the whistles, or after them.

The time after the two whistles, before the boats came together, was a very short time ; a half a minute to a minute, perhaps ; the three followed immediately after the two—immediately after the "Parker" blew the two—then the "Grant" gave three.

Cross-examined by Mr. Campbell :

I was in the pilot-house about the time the bells were struck, when the whistles sounded ; when I went up to the pilot-house the "Grant" was heading to the westward, in answer to the first whistle to port the helm ; when I went up to the pilot house the "Parker's" tow was right towards us, or pretty 278 near so ; we were heading to the westward a little ; had sheered to the westward in answer to the first whistle.

I heard something said on the "Parker" or schooner asking "why don't you go back ?" I don't know who it was, some one on the schooner ; at that time I was in the pilot house ; that was after our boat commenced going back ; the bells were given to stop, and then go back ; four bells ; she reversed her engine ; after that there was another signal given, the jingle bell, to give all the power they could in answer to her backing bells, to go back of course.

By Mr. Benedict.

I did not take particular notice of this light before the two whistles ; then I thought it was an anchor light , I had seen other lights ; I simply hadn't distinguished that from the other 279 lights ; I heard something said just before the collision, "why don't you go back ;" the cry came from the schooner or the steamboat ; the answer that was made was, "I am backing, and have been backing ;" our captain said that if the "Grant's" engine was backing, there would have been no use of her changing the wheel ; the canal boat sank up the river from us ; it went up against the tide ; the momentum or force of the schooner sent her up against the tide.

When I said that the "Grant" was backing, I meant the engine ; I was not speaking of the boat herself through the water ; I couldn't tell that ; I have seen a great many tows made up ; there was nothing out of the way, nothing improper in the making up of that tow that night ; I was aware that one side was a little heavier than the other; that is not uncommon at all; very seldom you can get a tow of four boats all alike; that does not make much difference, that I can see, in the steering; the "Grant" had a red light on the port side, a green light on the starboard side, and two vertical lights on the mast flag-staff; I couldn't say I saw the boat go down; I saw the light that had been in her cabin when that went out; that 280 wasn't over five minutes after the collision; I lost the light some time before the small boat got to her; the boat had gone from the "Coalport" before she sank; our boat got back; the man looked and came back and reported, then the man-of-war's boat came.

By Mr. Cook:

The "Grant" was headed up the river—when the small boat came back, I mean; when the "Lee" went down, I should judge she was three or four boats' lengths from us; I couldn't tell exactly, four or five, perhaps; I was standing on the "Coalport."

Mr. Campbell:

281 It is admitted that Richard Swartz, of the "Parker," was, at the time of this collision, a licensed pilot.

Henry Strubbe, sworn for the defence:

Direct-examination:

I am a boatman; I have been a boatman eight years; I was a hand on the "Grant" at the time of this collision; when the steamboat was going down the river, I was forward on the "Grant," on the lookout; I remember seeing the "Minnesota;" I remember seeing the Albany tow; the "Grant" and her tow were heading about half-way between the "Minnesota" and the Albany tow.

I saw the light that proved to be on the schooner; I saw a bright light; I first heard one whistle; I understood that it came from that vessel; at that time the vessel that had that 282 light was right ahead of us; in answer to that whistle, the "Grant" blew one whistle. I did not take notice whether there was any change in her course at that whistle; I then heard two whistles from the other vessel. That was answered from the "Grant" with three whistles; there were no two blasts of the whistle blown on the "Grant"—not that I know of. I did not understand what three whistles meant; I first thought there was danger of a collision, after three were blown; when she was so close to us, I saw there was danger; I heard some bells rung on the "Grant;" I don't know how many; I was forward, and couldn't hear much; I could tell that her engine was stopped; I could kind of feel that she was stopping and backing; the effect that produced was she kind of swung a little, but it was the load made that probably; her head went port—to the New York shore; that was after the three whistles when they went to back her.

After the collision the captain ordered us to lower a boat, and I went up to lower it, and just when I was on the upper deck, somebody hallooed, "this boat will do on the "Coalport;" it is handier;" so I turned right back and jumped on the "Coalport," and when the "Coalport's boot was in the water they 283 asked me if I was a good rower; I said I wasn't, but my partner was a good puller; he was an old sailor; my partner was Peter Svendsen; he was right there just as soon as I spoke; he was there, and he jumped into the boat; as soon as I got the oars from the forward hold—I went on the "Coalport"—on the canal boat—and then the captain commenced backing; I got the oars, and he pulled away; the small boat didn't reach the "Lee" before she sank; from the time of the collision until the light went out, wasn't over five minutes.

I did not hear anything said by Captain Cooper about cutting the tow loose right away after the collision happened, but after the small boat got back, and when we went down to Pier 2, East River, I heard him make the remark, "Charley, you "ought to have cut your tow loose, and saved my family;" "and that is all I did hear; I didn't hear any answer made to 284 that.

Cross-examined by Mr. Cooke:

I am no better judge of time than of distance, but I know it wasn't any longer time than five minutes from when she struck until she sank; I kept watching; I know well enough it wasn't, because a minute is a good deal when a person is in danger that way; I didn't look at my watch; it has not frequently been talked over that it wasn't over five minutes; I have never talked with anybody about it's not being over five minutes; I might have heard some one say it wasn't over five minutes before now, but not that I remember.

I heard a statement made on the coroner's inquest—different statements made there; I made my own statement there; I did not give the distance then. 285

I was on the lookout; There is always one forward and one aft; I did help the mate to get the fender; I helped him so long as he worked at it—gave him a hand; in going down, I noticed the Albany tow on the left; when we left the "Stakes" we went across, over towards the New York shore; when we got across to the New York shore, we headed down the river; at first we headed a little towards the Albany tow; after we passed the Albany tow, then we kind of sheered off towards the Battery, toward the left, towards New York; that was before the collision; by passing the Albany tow, I mean passing the big tug boat.

We did undertake to go down between the tow and the "Minnesota," of course; we were trying to head round towards the Battery; then we headed round a little more to the left; we were at the tail end of the tow when we sheered in; after that the collision occurred; we kept below the tail end of the Albany tow; I couldn't tell how far; it wasn't very far.

Cross-exam. by Mr. Campbell:

286 When the first whistle sounded I was in front of the pilot house on the deck of the "Grant;" the mate Hicks was with me there; a little before that we were trying to put a fender between the boats; the other deck hand, Svendsen, was at the stern of the boat.

We were putting in fenders just a little before the whistles were blown; I heard some bells, I don't know how many, because I was too far away for that.

Michael Sherman, sworn:

I have always followed the business of a boatman for the last thirty years, as master and pilot both; I have been a master and pilot for thirty years in the Hudson River and along the harbor of New York; I have been engaged in towing for six or eight years; I have seen the tug "U. S. Grant;" I have seen the tug "J. N. Parker;" I know about what capacity the boats 287 are generally; I have been in the habit towing round the harbor of New York, so that I am familiar with the tides there.

If the tug-boat "Grant" should take four boats in tow, two on each side, there being a difference of say 75 or 80 tons on one side more than on the other, there is nothing improper in making up the two in that way; it is a common occurrence.

Q. Now, if the tug "Grant," with such a tow made up in that way, going down the river, sees a bright light nearly head-to-head, at a distance of five or six hundred yards, and hears one whistle blown from the vessel having that bright light in tow, and the "Grant answers that with one whistle, what would you say as to the propriety of that navigation?

Objected to. Question withdrawn.

288 Q. Under those circumstances, a vessel going, as I have just stated, the two vessels having each answered with one whistle, and the "Grant" having ported her helm, would it be good navigation for the captain of the "Parker" then to blow two whistles?

Mr. Campbell.—I object to it.

Allowed. Exception.

A. No, sir; it would not.

Supposing the "Parker," under such circumstances as that, did blow two whistles, the navigation required of the "Grant," as good navigation, would be to stop and blow three whistles, and go back. If, after the captain of the "Parker" had blown one whistle, and got the answer of one whistle—supposing, after that time, he thought there was danger of a collision by each vessel keeping on, his duty then was to blow three.

Cross-examined by Mr. Campbell:

When the "Parker" blew two whistles, the "Grant" would be bound to change if he had a chance; at the time the two whistles were blown, the vessels were from two to three hundred 289
yards apart, or less than that, I believe; the way I understood it, the vessels were pretty near head and head, but one stood one way, and the other stood the other—one was sheered to the west, and the other to the east; if the "Grant" could have done it, it was her duty to pass to the left.

By Mr. Benedict:

Assuming that the "Grant" was going about five or six miles an hour, and the "Parker" at three or four, the tide being the latter part of the ebb, those circumstances would affect my previous testimony; it would bring them so close together, that the "Grant" and her tow couldn't alter—she got sheered to the west, and she couldn't sheer back again.

By Mr. Campbell: 290

It was not her duty to try to sheer so long as she stopped; that was the last thing she could do; I am not managing a boat at present; I was before the middle of February; I was on the "Thomas Cornell," employed four or five years on different boats, first one and then another; the last boat I was on was the "John T. Young."

Cross-examined by Mr. Cook:

It is the business of the man that makes his choice, first to blow the first whistle; either one has a right to make it; whoever makes it first, then the other one is bound to obey it; if he cannot, then he must blow three whistles and stop, if he finds it impracticable to do as the first signal requires, then it is bad navigation for him to answer affirmatively; he might answer it, 291
if he thought he had room enough to do it; if he hasn't room enough, then he has to blow his three whistles; he is to determine whether, under all the circumstances, he should make that course; if he determines he can't, he has to blow three whistles, and stop to avoid a collision.

George Irving, sworn:

I am a police officer, N. Y.; I have been a police officer very near 20 years, within a few months; I remember the arrest of Captain Swartz, of the tug "Parker," in relation to this matter; I was present at the Tombs when the charge was made against him; I went to the Tombs in company with the captain of the

"Parker;" I saw Captain Cooper then; I heard him make the complaint; I came away with Captain Cooper after the complaint was made; I had a talk with him about the matter.

Q. How full a talk did you have with him in relation to the case?

Objected to. Allowed. Exception for defendant, Austin. 292

A. Yes, sir.

Q. Now, did captain Cooper, in that conversation, say an thing at all about anybody being to blame in the matter, except captain Swartz, against whom the complaint was made?

Objected to. Allowed. Exception for defendant, Austin.

A. He didn't state about making any complaint against anybody but Captain Swartz; he said he didn't find any fault against anybody but the captain of the "Parker;" that seemed to be it.

By Mr. Cook.—I don't recollect the exact words; he found fault with the captain of the "Parker," but I don't recollect the 293 exact words; I only recollect his finding fault with the captain of the "Parker;" that was on Monday, the 11th of October; the conversation took place on the way through Centre street, and through a part of Nassau street; we kept talking all the way—he kept talking all the way—talking and crying about it.

Mr. Campbell.—The defendant, "The Eastern Line," found out about Cooper speaking to me, because they made inquiries in the Station House of who made the arrest; then I was served with a subpœna; they asked me no questions about what he said.

By Mr. Cooke.—In that conversation Cooper made some remark about somebody saying, "Let them go to hell," or something to that effect; I understood him to mean the captain of the "Parker;" I suppose he meant some one on the tugboat.

294 John P. Menges, sworn:

I am a boatman; I know Captain Cooper; I have known him for seven or eight years—six or seven years—I don't know exactly; I remember a conversation with Captain Cooper a short time after the loss of the boat; he was right in South street; I had a talk with him about this accident.

I came up behind him; I heard of it just half an-hour before; I says, "You had hard luck;" he says, "Yes, I did;" says I, "Where did it happen to you?" "Right off the Battery;" I says, "Who had you in tow?" "The 'Grant,' he says;" "Who was on the tow?" I says; he says, "Charley;" "Well, which was the other boat?" "One of the Austin Line; I cannot exactly say the 'Parker,' or what;" "Well," says I, "was

Captain Charley to blame?" and he says, "No! no! but that other God d——d s—— b——;" and those were the very words he said.

By Mr. Cooke.—I guess that conversation happened about ten o'clock, or the neighborhood of that time; I don't know whether Sunday or Monday; it was the first time I had heard of the accident. 295

I was then engaged in business as a boatman, as I am now, for myself; I own a boat of my own; the only thing I have to do with this Eastern Transportation Line is, that when the tow me, I pay them, that is all; I told some one connected with this Eastern Transportation Line about this conversation with Cooper two or three weeks after it; it was before the Auburn trial; Mr. Coffin took me to Auburn; I told the same story there.

I know this Captain Charley by sight; I have known him for about this last three or four years, I knew who he meant when Cooper said "Captain Charley;" I did not talk with him; he did not say anything more than what I have mentioned; he said nothing to me about the circumstances.

By Mr. Campbell.—Captain Williams was not with me at this time when I had this talk.

296

Jared Coffin, sworn:

I am Secretary of the Eastern Transportation Company; I first heard of this accident on the Monday morning following the accident; I saw Mr. Cooper on that morning; when I first saw him he was in the lower office, on the second floor of No. 12 South street; afterwards I saw him in the upper office, on the third floor.

I had a conversation with him in relation to this occurrence; there was something said in that conversation about his making a protest; I asked him if his boat was insured, and he said she was; I asked him where she was insured, and he said she was insured in the Mercantile Insurance Co.; I asked him for how much, and he said $3,000; I then asked him if he had made a protest, and he said "No;" I told him that he should do so; that it was his duty to do so, that he ought do so to protect 297 his interest: and that was the substance of what I told him; I had a conversation with him before this in relation to the occurrence of the collision; he gave me a full account; that was before I had the talk about the protest.

After I had that talk, I advised him that it was his interest to make a protest; I said he must be very careful of what he said in his protest, for whatever he said he must swear to; he must be particular; previous to this he told me the circumstances of the collision; he was crying and feeling very badly; he excited my sympathy, and I told him, says I, "Captain, if you want me to do it, I will help you" he said that he did; says I, "sit down, and go all over your account again, so I can get it straight in my mind;" he drew up a chair, and sat down beside where I was, and went all over the occurrence, and, as he made his statement, whatever seemed to be pertinent, I put in the protest, and wrote down; after I had written the statement down, I asked him if that was his statement, and he said it was; I read it all over to him first, and then asked him if it was his statement, and he said it was; then I went with that 298 up to the notary's.

I did not request him to sign that statement that I made; it was a mere memorandum, to be used by the notary as a guidance—it was merely a statement of the fact; I have that statement.

Paper shown.

That is the paper written by me at the time, in my handwriting.

Captain Cooper, in that conversation, said, in relation to the whistles, that he was in the pilot house of the "Grant," with the captain, when they left the "Stakes" at Jersey City, about half-past 10 on the previous Saturday night, he said when they got near down to the "Minnesota," he saw a bright light ahead, and in a moment afterwards he mentioned the time (I don't re- 299 collect what), he said he saw that this was lashed to a schooner in tow of a tugboat; that this tugboat gave one blast on her whistle; he said that the captain of the "Grant" answered it immediately with one blast; he said in about three minutes this tug, called the "Parker," gave two blasts, and the captain on the "Grant" says, "What! does he mean to run us down?" and replied with three blasts of the "Grant's" whistle, and the captain told Cooper to go down aboard of the boat, and he rang the bells to stop and back the boat; then I went with Captain Cooper to the notary's—to Mr. Jones; when we got up to the notary's—Mr. Jones, in Wall street—I introduced Mr. Cooper to Mr. Jones, and told him that Captain Cooper's boat had been sunk, and his wife and child had been drowned, and that Mr. Cooper desired to make a protest, and I handed him that paper; Mr. Jones took the paper and asked the captain if 300 that was his statement, and he said it was; he asked him to explain as he read it along, and then Mr. Jones made some memorandums in blue, which you will find there, as his suggestions in drawing up the protest, and told Captain Cooper to come in either that afternoon or the following morning, and he would have his protest ready for him to sign.

I made no suggestions in that conversation at the notary's as to how the protest should be made; in the conversation at our office, something was said by Captain Cooper as to who was to blame in the matter.

After Captain Cooper had gone all over his statement, I says, "Now, Hobart, I want you to tell me whether you think Charley is to blame;" he smacked one fist down over the other that way, and says he, "Mr. Coffin——"

Mr. Campbell—I object to this as immaterial and illegal, and as not having a foundation laid for it.

(Objection overruled. Exception.)

In answer to my question whether he considered Charley to blame, he says, "Mr. Coffin, I don't blame Charley; he did "everything that he could to save my boat and my family, "(now I have to use his words), but I do blame that damned —— 301 "s—— of a b—— on the 'Parker;' he has murdered my wife "and my child, and by G—— I will make him suffer for it."

Mr. Campbell.—I move that all that part may be stricken out.

(Motion denied. Exception noted.)

By Mr. Cooke.—I first heard of this accident on Monday morning; when I first saw Mr. Cooper, he was in the lower office; he was giving an account of the accident; I first heard it from him; I knew nothing about it until I heard his statement; that was the occasion when I had this interview—the same day; I heard a portion of this statement in the lower office; he was telling it there; then I heard his whole statement at the same time in the upper office. 302

I got there somewhere about nine o'clock in the morning, and he was telling it then; he didn't say what he came there for; I found him there; he was there when I arrived, and didn't say what his business was; I commenced the conversation, and taking his statement immediately, at once; I had seen him before, and knew all about him; I did business with him; we had towed for him before; I did not ask him what notary he wanted to go to; I told him I would take him to a notary's, and took him to Mr. Jones, at the office of Benedict, Taft & Benedict.

I think that all the notary took down there in that protest he got either from the lips of Mr. Cooper or else from the statement; I have no recollection of ever making any suggestion whatever; I did not suggest that Capt. Swartz ought to be arrested; I was at the Tombs at the time Cap. Swartz was 303 there; I don't recollect distinctly whether that was the same day or the day following; I can't place it; I was there on that day that Swartz was arraigned.

I am the man that found out about George Irwin, and had him subpœnaed, I didn't know what Mr. Irwin was going to swear to; I knew he made the arrest; afterwards I had an idea of what he was going to swear to, but not before I subpœnaed him; I subpœnaed him at once; I don't recollect whether I was down at the Tombs more than once; I saw Captain Cooper there; I was not a witness, nor subpœnaed there; I went there at the request of Captain Cooper; I went with Cooper to the Italian School to see his daughter, Carrie Cooper;

she was there: Captain Cooper asked me to go and say something consoling and comforting to her, as she was feeling very badly at the loss of her mother and sister; he wanted me to go and see this daughter, and say to her, that I thought they either would be found alive or that the bodies would be found if they were drowned; to console and comfort her, which I was certainly disposed to do; my impression
304 is, it was the same day, but I cannot swear positively; it was while we were walking up to the notary's office he asked me to go there.

It was after I left the notary's office, that I went to the Italian School; he went with me to the Italian School; I think we went from there to the Tombs; I think I went back to the office without him.

I am Secretary of the Company, and was at that time, in the office, at that time, we had a man by the name of Daniel McWilliams, who had charge of the outside matters relating to tow boats and to canal boats; we had a man by the name of Johnson, who was engaged in procuring orders for boats, doing business in Trinity Building for us; and we had a boy; I think I got back to my office somewhere about two o'clock that day; I lost pretty much the whole day, except the time that elapsed
305 after two o'clock.

Frederick Roberts is the president of that company; he lived in New York; he was in the office frequently; my duties are office business; my business was not altogether in the office, a portion of it was; I went on my own responsibility; the first conversation took place between me and Cooper about going to the Tombs, I think, while we were walking up to the notary's; I was in there the day he was thrown down stairs; that was more than a week afterwards, and less than three months; that is as near as I can come to it; it was after he made the statement; the preparation of this defense devolved on me partially, I went to Auburn as a witness; I did not appear before the Coroner's inquest as a witness; the company did not send counsel there; there was a stenographer there; I don't know whether the company sent him; I don't recollect whether the
306 company employed counsel in the matter before the Coroner's inquest, I had not consulted with Mr. Benedict about that Coroner's inquest, before the inquest took place, or while it was going on.

I was sworn at Auburn; I was a witness there; I did not testify there to this conversation, as to what Cooper said to me in answer to my inquiries; that was an action for the loss of this boat; Cooper was a witness on that trial; I understood his brother was the man who brought the suit.

Cross-examined by Mr. Campbell:

I do not know Mr. Warburton, the stenographer; never had the minutes, and never saw them; I have no recollection of any charge ever being made against our company for making this protest; I don't know who paid it; I don't know that anybody ever paid it.

Re-direct examination by Mr. Benedict:

Captain Williams was not arrested after he got back from New Haven; he surrendered himself by the direction or on the responsibility of an officer of the company; we did not discharge him; he is in our employ, and has been ever since. 307

John Kearns, a witness for plaintiff, sworn:

I am a police officer, attached to the First Precinct, New York City; I remember the night that Capt. Cooper came to the station in New street, with the little girl; I was not in that night; I next saw him on Sunday morning; I was present at the time Swartz was taken up there—to that office; he made the complaint when the men were arrested; that is when he made the complaint; I recollect distinctly that he attached the blame to the tug-boat that had the schooner in tow, for coming into him; but he attached all the blame for the loss of his wife and the child to the captain of the tug-boat that had him in tow; he told me, in presence of Captain Petty, that he urged the captain, for God's sake, to cast a line off the tow, and save his wife and child; and he made the remark that the captain said—the man at the tow—either the tow or boat—I cannot tell which, "Go to h—l." 308

Cross-examined by Mr. Benedict:

I remember the statement he made coming from the Tombs, that he said it was the fault of the captain of the tug that had the schooner in tow for running into him; but he attached the blame for the loss of his wife and child to the tug that had him in tow—that is, himself in tow; these were the words from Capt. Cooper—the very words that he said; he said it in my presence, and Capt. Petty's, and the Sergeant of Police at the Station House, after coming from the Tombs, and on the way coming; he said something such as that, on the way down from the Tombs to the Station; on the way down, he said it to me and the other officer who was along with me (Irving); I swear that Mr. Cooper, at that time, said he attached the blame for the loss of his wife and child to the captain of the "Grant," and that he attached the blame for the collision to the captain of the "Parker." 309

Cross-examined by Mr. Campbell:

That gentleman there subpœnaed me here. I mean the last witness; I have been here only once since; well, I made inquiry, and I was told that I would not be wanted to-day; the gentleman who served me with the subpæna told me that.

The first thing Cooper said was that he had lost his wife and child; that they could have been saved if the captain of the tug that had him in tow would cut his lines loose; he told Capt. Petty and myself that in the Station House.

Samuel W. Millbank, sworn for defendant:

310 I am Treasurer of the Eastern Transportation Company; the first I heard of this accident was that I saw it in the "*Herald*" before coming down town; Sunday morning, I think it was; I am not certain whether it was Sunday or Monday; Captain Cooper came in to see me; that was either Monday morning or Tuesday; I am not certain; he came into my private office, and told me about the accident; I talked to him about the accident; he spoke to me that time in relation to blowing the whistle; he said to me, in that conversation, that the captain of the "Grant" answered the two whistles of the "Parker" with three; he said that Capt. Williams was not to be blamed; that he acted precisely as the law directed him to do.

Mr. Campbell.—I object; I move to strike that out.

The Court.—I will overrule the motion.

311 (Exception).

He said that the only possible fault he could find with Captain Williams at all, was for not cutting his tow loose and saving his wife and child; I was present when Cooper was asked why he did not sign the protest; he said it was not because he thought Captain Williams was to blame, but he had seen his lawyer, and his lawyer told him that he was not to judge in the matter at all, and he was not to sign it; he said his lawyer was Mr. Campbell.

(Objected to. Motion to strike out denied. Exception noted).

The conversation about the blame, I should think, was about Wednesday the 13th; I am not certain about the day.

312 Daniel McWilliams, sworn:

I am General Superintendent of the Eastern Transportation Company; I first heard of this accident at two o'clock at night—the night of the 9th of October; I saw Captain Cooper between five and six o'clock next morning at Jersey City; I met him between five and six o'clock in the morning, and I said to him: "Cap., you have had a very sad, a serious accident;" I think that is the language; he said "yes; he had lost all he had in the world;" I then asked him how it happened; he said that after the boat had been made fast in the tow, after they left the "Stakes," he went up into the pilot-house along with Captain Charley, and when they got about opposite Piers 4 and 5, in the North River, they sighted a schooner ahead, and a tug boat

alongside of her, and the tug blew one whistle, and that Cap-
tain Charley answered with one, and that, soon after the other
tug blew two, and Charley answered with three, and rung to go
back; he said he saw there was going to be a collision, and he
got out of the "Grant's" pilot-house, and went aboard of his
boat; he went to run forward to put in a fender; he thought
his life would be in danger, and he dropped the fender and ran
back, picked up his daughter Carrie, and jumped on the "Coal- 313
port;" as he jumped, the line parted, and he said the switch
of the line struck him on the back, and he could not get up im-
mediately; but when he did recover, his boat was away fifteen
or twenty feet, I think he said, if I ain't mistaken.

He said that he wanted to find the schooner; that it might be possible that his wife and child were aboard the schooner, as the schooner carried her boat back away from him with the "Grant," and he thought it might be possible that they were still aboard the schooner; I asked him to go down aboard the "Grant," and we would try and find the schooner; there would be no trouble in finding her, because she would, evidently, have some mark upon her, and we could find her. We went down on board the "Grant;" we went across on the East River, where the other canal boats were laying, to see if we could get any information. 314

In that conversation Captain Cooper said Charley had done all that any man could do; "but that other s— — — b——! we must find." I saw Capt. Cooper in the office afterwards several times; I remember when the statement was made by Mr. Coffin; that statement was read over by Mr. Coffin to Capt. Cooper; I heard it read over; I heard Mr. Coffin read it to Mr. Cooper; Cooper said it was his statement.

Cross-examined by Mr. Cooke:

On that Sunday morning I lived in Jersey City; I saw Capt.
Cooper in Hudson street, Jersey City; Capt. Williams had
been to my house at two o'clock in the morning, and told me
about the trouble; I got up, I think, about five o'clock that
morning, not quite so early as usual; I generally got away at
three or four, just as they opened the gates. I went up to see 315
if they had heard anything, to see whether they had got any
further information as to whether his wife and daughter had
been saved; I fell in with Cooper in Hudson street, on the
street; that conversation took place between Morris and Essex
streets in Jersey City, and in Hudson street; I came over to
the office that day—that Sunday; Cooper came back with us in
the "Grant" to Pier 8, North River; I came across in the
"Grant;" Captain Williams, I think, came to Jersey City in
the "Grant;" he left the tow at Pier 1, East River; I crossed
back in the morning from New Jersey to New York in the
"Grant;" Cooper was on board; none of us went to the office
that Sunday morning; when we came across I did not make

an appointment to meet Cooper at the office next morning. My impression is that Captain Williams left that Sunday night with the remainder of his tow.

I remember distinctly Cooper saying that Capt. Williams had had done all that he could; he did not know then, for certain, whether his wife and daughter were lost or not; he was in doubt of it; he was in hopes they were on board the schooner;
316 he said "Captain Charley had done all that *he* could, but that other s— — — b——! we want to find him," or "I want to find him;" I don't know which; he did not know it was the "Parker" had done it at that time; all he knew was it was a schooner or a steamboat; he did not know the name of either one. I don't remember exactly who was present at that conversation between me and Cooper, but my impression is that there was a friend of Mr. Cooper present; I am not positive; he was a stranger to me; there was no one else present; I don't think he heard the whole of this conversation; I think he came up while Cooper and I were speaking; I think he heard some of it; he might have heard the whole; Cooper was very much excited; he said, my impression is, that he had left his daughter Carrie at a friend's house in New York; he said he had been down at the Battery until the policeman came and
317 took him up, I think.

The captain and the coroner came into my bedroom that Sunday morning; I suppose I would not have gotten up till seven or eight o'clock, but that morning I got up earlier on account of what I have said; and, going down there, I met Capt. Cooper on the street, coming up from the dock.

Cross-examined by Mr. Campbell:

Captain Cooper told me the next morning—on Sunday morning, between five and six o'clock, at Jersey City—that he had met a policeman at the Battery; I could not tell you at what time Williams sailed with his tow for New Haven; he had to go when the tide suited; I remember telling him to go that night, and report in the office when he returned.

318 William E. Gladwish, sworn:

I am Vice-President of the Eastern Transportation Company; I know Mr. Cooper; I remember that there was an occurrence when Cooper was at our office, some time after the collision; I think it was over a month after the loss; I have no recollection of ever making any such remark in that conversation with Cooper, as that I supposed that the Transportation Line had got to be the insurance company for everybody who was connected with it; I am positive I did not say anything like that, or anything to that effect.

Samuel H. Valentine, sworn:

I am a counsellor-at-law, and acquainted with marine business; I was present at the trial at Auburn; I remember the examination of Mr. Patterson there; I took notes of his examination; I remember you (Mr. Benedict) showing that affidavit to Mr. Patterson.

(Paper shown.)

I remember you asking him if that was his signature; he said it was his signature; I remember you asking him whether he swore to it; he said that he did swear to it; I remember that he was asked questions by Mr. Campbell in relation to the matter; he was cross-examined on the matter by Mr. Campbell; Mr. Campbell asked him whether the affidavit was read over to him, or whether the contents were merely stated to him. 319

Cross-examined by Mr. Campbell:

He did not state that the affidavit was not read over to him, but that he took the word of whoever drew it, that it was correct; he did not state that in substance; what he said was, that the affidavit was not read over to him, but its contents were stated to him; the affidavit is in Mr. Jones' handwriting.

The defendant, the Eastern Transportation Line, rests.

320

Frederick K. Lewis, sworn for plaintiff:

I have been a boatman about fourteen years; on this night, October, 1875, when this collision took place, I was right aboard of the schooner—in the bow of her; at the time of the collision I was right forward amidship; I remember what lights the "Parker" had; she had a red light on the port side, a green light on the starboard side, a broad head light and two aft on the flag staff; I saw the "Grant" before she struck; I suppose when we first saw her, she was right ahead of the man-of-war—coming right across her bow; we could not see her before she came around the bow of the man-of-war; when I first saw her, she was, I should say, five hundred yards off; I heard whistles sounded by the "Parker"—first one whistle; I know what that meant; it meant go to your right, for the "Grant" to go to her right; the "Grant" answered that whistle with one; I next heard two whistles of the "Parker;" then two of the "Grant;" then about two minutes after that, the captain of the "Grant" blew three; they were loud whistles the "Parker" gave; when this first whistle was sounded, the "Grant" was away from the "Parker," I should say about three hundred and fifty yards; after the two whistles, the "Grant" was distant about three hundred yards; it might be three hundred yards: a minute or a minute and a half after that, the "Grant" answered with the two whistles; it was as much as a minute; when the collision actually took place, I was standing at the bow of the schooner; I saw the "Grant" there; I spoke to the captain of the "Grant" before the colli- 321 sion took place; I told the captain of the "Grant," "why don't you back?" he answered me; "I cannot back, I have got a very heavy tow, and a strong ebb tide;" that is what he said to me.

I heard bells on the "Parker;" we were only one bell ahead: we pass under that, first off; then Capt. Swartz stopped her, and gave two bells for a back, and a jingle; the jingle means 322 to let her do the best she could; the "Grant" was coming, all the time; I suppose about averaging the power she has; I suppose she came about from three to four miles an hour, and about two miles of a current with her; the course of the "Grant" was changed from the time I first saw her, she threw the wheel aport, and she seemed to sheer off across the man-of-war, in the middle of the river, and as soon as the second whistle was given from the "Parker" she seemed to come round the other way—put the wheel hard to starboard, and come over to port.

I was not in the schooner before she was taken in tow by the "Parker;" I made the lines fast from the "Parker" to the schooner; the object of taking her in tow was to put her alongside the Albany tow.

323 *Cross-examined by Mr. Benedict:*

I was not a hand on the schooner; I was not a hand on the "Parker," either, that night; I was nothing there—came just to see the engineer of her, Charles Patterson; I was then in Pier 27's employ, Providence, Rhode Island; I was there visiting the engineer, Patterson; Patterson was not with me at that time; I had been on the schooner, I should say, about ten minutes; I helped the captain to hoist the anchor—to raise the anchor; he had no crew there; all he had was himself--the captain—second mate, and one sailor; no one else from the "Parker" went on board to help; we picked the schooner up off the Battery; I should say about three hundred yards off the shore; she was to the west of the man-of-war; I knew where the schooner was going to be taken; I heard them say she was going to Rondout, and to be put alongside the Albany 324 tow.

There was some one else aboard I knew, besides Patterson; another young man from Brooklyn—the steward of her; I knew Captain Swartz; I have known him for about three or four years; I had no dealings with him, never talked with the man before; I had nothing to do with the navigation of either of them at all; I know how the "Parker" had the schooner alongside; the "Parker" had the schooner on her starboard side; they were right fore and aft up the North River; the schooner projected ahead about half way; forty or fifty feet at least.

I was on the bow of the schooner; the "Parker" had come from Pier 5 to take that schooner; at the time when the schooner started with the "Parker," I was looking out ahead—up the

river, all the while ; I was looking out ahead, and looking at the side, touching the "Grant." I saw some one on board the "Parker ;" I saw captain Swartz in the pilot-house ; I was on the same side hoisting the anchor, and I could see ; as we were going up the river I looked back to see whether captian Swartz was in the pilot-house ; it was after the "Grant's" tow was seen ; it was not before the whistles were blown ; he was in the pilot-house then ; I saw him in the pilot-house all the 325
time, till we picked up the schooner ; he never got off of that pilot-house from the time he left Pier 5 till the collision ended.

I was looking ahead all the time, watching the "Grant," at the same time also watching the "Parker ;" I did not see anybody else on the "Parker," besides captain Swartz, as we were going up the river ; there were two more forward in the schooner besides myself ; the second mate, and one of the deck-hands —one of the sailor's that belonged to the schooner ; the schooner was laden ; she had sails up ; I suppose she was only from eight to nine feet from the water at the bow ; probably it might be more ; I know Captain Swartz is dead.

Re-direct examination :

I was still at work, raising the anchor to its place, when I 326
heard these whistles ; from the time we commenced raising the anchor to when I heard these whistles, was, I should say, about eight or ten minutes—something like that—we had gotten fairly under-weigh, just one bell ; that means to go ahead, slow ; we were running under that one bell ; we were not fully under-weigh when the accident happened.

The "Minnesota," when the whistle was blown, was off to the left ; we were up abreast the "Minnesota" when the second whistle was blown ; we were not ahead of the "Minnesota ;" we were not more than half the length of the "Minnesota" when I heard the two whistles—just about that ; we were nearer the Albany tow than we were to the "Minnesota ;" we did not have a man in the extreme bow of the schooner as a look-out.

When I first sighted the "Grant," I saw her red light—I saw 327
both lights ; the "Parker" changed her course during this time ; when the first whistle was given, the "Parker" put the wheel over hard to port ; that drove the schooner and himself towards the Albany tow and the New York shore, and the captain of the "Grant" should go inside between the "Minnesota" and the "Parker ;" the captain of the "Parker" gave two whistles.

He then put his wheel hard to starboard, and, I believe, the "Grant" made a little move on it then ; she seemed to come up with her bow, up towards the Albany tow ; the captain struck one bell, and two for a start right away, and a jingle ; and I said to the captain, says I, "Swartz, I guess you will be pretty tight here," and he says, "I do all I can ; I have got 70 pounds of steam on, right open; that is all I can do;" she was backing away all the time from the "Grant" under a full head; I should suppose a minute and a half elapsed between the first whistle and the second; the boat which we struck, swung off across the stern of the "Grant's" tow towards the New York shore.

We held our hold there for a little while, and I ran aft on the 328 quarter deck of the schooner, and as soon as I came aft on the quarter deck of the schooner, I saw the captain's wife—Cooper's wife—coming out of the cabin, and she was hallooing, "Save me! save me!" I turned from her right away, and freed the small boat of the schooner as quick as I could do it; I had one end down, and the lock had the other end foul, and I could not get it clear off; I took a sailor off the schooner and the steward of the "J. N. Parker," and put them on board of the small boat to try and save the bodies off the canal boat; they went out, but they must have gotten there too late; I did not go on board of the boat.

I suppose the "Lee" was about a hundred to a hundred and fifty yards astern of us when I last saw her; the "Parker," after she was signalled to back, backed nine or ten minutes before she started ahead again; there was a strong tide against 329 us; I have shown how much we made—not half the length of the Minnesota in a minute and a half; we fully succeeded in stopping our headway before the collision; I think we were not going up stream at all; after the collision we got under weigh again; then we went forward and attached the schooner to the Albany tow, whilst the "Parker" was engaged in getting the tow together; the tow lay pretty nearly still.

Re-cross examination:

The engine of the "Parker" was backing at the time of the collision; the "Parker" and the schooner were not going through the water at all; I do not know of any bells struck on the "Parker" to go ahead, not for ten minutes after the collision; probably not for fifteen; the tide was ebb, carrying us down the stream; the "Lee," at the time she sunk, was about a hun- 330 dred and fifty to two hundred yards down the river from us; at the time of the collision we were heaving the anchor.

The "Lee" struck the bow of the schooner, and parted two of the chains of the schooner, and the power of the blow carried her away from us up the river; she drifted down again, and we did not drift—not at all; I suppose the anchor held us; the schooner lay at anchor about amidships of the "Minnesota;" the collision to took place pretty near abreast of the "Minnesota;" I suppose three hundred and fifty or four hundred yards ahead of her.

Cross-examination by Mr. Campbell:

I suppose the depth of water was about seven to eight fathoms; we had not got the anchor fully up when this collision took place; we were heaving it up, and "Parker" was just in the act of fastening on to this boat; we had been heaving her eight or ten minutes before the collision.

Frederick Stebbins, sworn:

I am Captain and pilot in tow-boating; I have been such fifteen years, running around New York harbor and Hudson River to Troy; I have been here during part of yesterday and to-day, 331 and have heard the evidence; I heard the testimony in reference to the rate of speed that the "Grant" was actually going at, the time when the collision occurred, and as to the state of the tide, and the whistles that should be given.

During the time I have stated, it has been my entire business to take charge of vessels; after the "Parker," in this case, had blown one whistle, it was the duty of the "Grant" to answer that whistle, and then if the "Parker" blew two whistles, as good navigators, those on board of the "Grant" should answer with two whistles.

The Court.—Assuming that there had been one whistle, and that that had been answered by the "Grant," and the "Grant" put her wheel a port, and the "Parker" blew two whistles—which was the rule—was it the right and duty of the "Grant" to answer those two whistles? If they saw any approaching danger, should she have blown three whistles and stopped the engine? 332

A. She should have answered by two whistles.

By the Court.—Then if there was any danger, should she have blown three whistles, stopped her engine, and commenced to back?

A. Yes, sir.

Cross-examination by Mr. Benedict:

Q. Under those circumstances, there having been a previous interchange of whistles, in which each vessel ported her helm; then, if there were two whistles blown from the "Parker," and the Captain of the "Grant" thought he could not get by, do I understand you to say he should answer with two whistles, or 333 three?

A. With two, answer the "Parker," following with three; that is the way I was taught.

Q. Now, if the tug "Grant, with such a tow made up in that way, going down the river, sees a bright light nearly head to head, at a distance of five or six hundred yards, and hears one whistle blown from the vessel having that bright light in tow, and the "Grant" answers that with one whistle, what would you say as to the propriety of that navigation?

(Objected to, question withdrawn).

Q. Under those circumstances, a vessel going, as I have just stated—the two vessels having each answered with one whistle, and the "Grant" having ported her helm—would it be good navigation for the captain of the "Parker" then to blow two whistles?

334 (Question objected to by counsel for defendant Austin. Objection overruled; Exception).

A. No, sir, it would not.

Q. If the "Parker" did, under these circumstances blow two whistles, what would be the management required of the "Grant?"

(Objected to by counsel for defendant Austin; Objection overruled; Exception).

A. To stop, blow three whistles, and go back.

I will explain; it would be impossible to change the course of the boats in that distance, after the whistles were blown.

Re-direct:

335 If the "Grant" did answer with two whistles, it was the duty of the person on board the "Grant," as a good seaman, to turn to the left, if he could safely; sometimes it is not safe; it is the right of the boat which blows the first whistle, to determine on which side a boat shall go, when two boats are approaching; if a whistle is blown by a boat when two are approaching each other, head on, the captain of the boat that is whistled to, can generally form an opinion whether it is safe to go in the direction indicated by that first whistle, before he blows at all; and then if he does not acquiesce and answer the whistle, his duty then is to give a danger whistle, and start her back.

By the Court.—Take this case. You heard the evidence. It appears that the "Parker" blew one whistle, and then the "Grant" blew one; and then the "Parker" blew two whistles. Now, suppose the man on the "Grant" thought he could not go on that side, what was his duty to do.

336 A. Well, his duty was to start back on the signal whistle, if he thought he could not go on the other side of her.

The Court:

Q. Suppose he could not go on the side that was last indicated, to wit, on the starboard side of the "Parker"?

A. Well, if it had been my case, I should have answered with two whistles, given the signal of danger whistle, stopped and backed.

Q. This eight miles an hour—is it an unusual rate of speed in towing a wide tow?

A. I think they can make eight knots well enough with the tide—a strong tide; ahead in a strong tide.

Cornelius Corwin, sworn:

My business is piloting steamboats up the Hudson River, I have been at that since 1851; I am acquainted with the business; I know the signals, how they should be given in order.

Q. When two boats are approaching head and head—when the tide is ebb—and one coming down, and they are about from two to three hundred yards apart, and one gives a signal of one whistle, and the other answers that whistle, and then the first one gives a signal of two whistles, what should the one that answered the first whistle do?—answer the second whistle or not? 337

A. I should think I would answer the second whistle, and I think I would stop the boat.

I would answer the second whistle, and immediately after blow the three; in passing a vessel at anchor, if the pilot sees the vessel, and he is confident that she is at anchor, he runs at all hazards to himself; he is bound to pass it, and not hit it.

PLAINTIFF RESTS.

Timothy Seaman, sworn for the defendant, The Eastern Transportation Line.

I am master and pilot on a steamboat; I have been a pilot on steamboats about thirty-five years; running down the harbor of New York principally. 338

Q. Now, sir, supposing two steamboats meeting each other nearly head and head, one blows one whistle, and it is answered by one, and each of them ports her helm, and then the first one blows two, and the pilot of the second one considers that he can't pass in accordance with the two whistles, what is it his business to do?

A. What I should do is, I should stop my boat, and go back on two whistles.

Q. What whistles should you blow?

A. I should blow three whistles.

John M. Biggio, sworn for plaintiff:

I remember the occasion of this collision, down in the harbor; I saw Mr. McWilliams on the stand; I heard him testify to the conversation he had with Captain Cooper; that conversation occurred in this way; we went from New York over there, and met Mr. McWilliams in the street, as he stated here; when we met him, he said: "You have had hard luck—bad luck: How did it happen?" Cooper went on and stated how it happened; he asked about who was to blame? Capt. Cooper said he did not like to attach any blame to anybody; before that, Captain Cooper and I were speaking together, and he told me not to say anything because it might prejudice his case; he says: "I have not blamed anybody." 339

Then Captain McWilliams said: "You don't blame us;" Cooper said: "You have done all you could to me."

With that we walked down to the dock, and waited there quite a spell before the "Grant" came.

I did not hear Captain Cooper call the captain of the "Parker" "a s—— b——," or anything like that; I was present, and heard pretty much all the conversation; I went there as a friend of Captain Cooper; we went there to see if we could find the schooner, with his wife and daughter on it; I was present
340 all the time when McWilliams and Cooper were together.

Cross-exam. by Mr. Benedict:

My attention has not been called to that conversation since it occurred, until to-day; I have not thought of it since that time, because Captain Cooper has not been near me; Captain Cooper called my attention to it to-day; he came last night, and asked me if I recollected what was said; I told it myself, just as I told it now; he did not tell me what had been sworn to in relation to the matter; he did not tell me that he had been asked about that conversation as I know of; he did not say he wanted me to come and give testimony about it; he came and wanted me to say what I knew about it; he did not tell me that there had been some testimony given about the matter; that I was to come here I knew long before, because he said: "I may want
341 you to testify as to where I went that night;" that is, I suppose, all they wanted of me here.

I will not swear to the exact words McWilliams used on that occasion, but as I understood them; I will undertake to swear to the exact words that Captain Cooper said; I give the substance; that is what I mean; I am able to say the very words which Mr. Cooper used on that occasion; I am not positive about the very words which McWilliams used on that occasion; the words of Mr. Cooper said there have been used to me all along before, during the night, and again, that the "captain of the 'Grant' had done all he could to him; did all he could to him;" those are the very words, as I understood.

Hobart Cooper, recalled:

342 I heard McWilliams' testimony here as to that conversation.
Q. What did you say to him upon the subject of what——

(Objected to as having been already gone over.)

The Court.—A witness who is attempted to be impeached may state what he has said.

Mr. Benedict.—He has stated it; he was asked about it once, and stated it once.

The Court.—I will allow it.

(Exception noted.)

What occurred was this: I met Mr. McWilliams; Mr. Biggio and I were together; I met McWilliams; he told me I had had hard luck; I told him, "Yes;" I told him they had done all they could to me; I did not tell him that "Captain Williams had done all he could to save me;" I did not intimate to him that Captain Williams was not to blame for the collision; I did not know but my wife and child were on board the schooner.

343 I did not, on that occasion, tell McWilliams that Captain Charley had done all he could for me, but that the captain of the schooner—he was the s——b———I wanted to find; I did not use any such language at all in speaking to him.

The only words which were used about "s—of a b——" were, that I told him I hallooed to the men in some of fhe boats—the small boats—or something—for them to have saved that woman and child; they hallooed back: "Go to hell, you s— — — b—!" I told McWilliams they made that answer to me from one of the boats; I heard Peter Menges' testimony as to the conversation he had with me.

Q. What was there of that conversation?

(Objected to on the same ground as before.)

344 A. I did not say anything to him about the "s— — —b—," as applied to the captain of the schooner, or the "Parker;" I told him the story about as it was; I went on and told him about what I said, and what they had done; I told him I hallooed to some men if they had saved the woman and child, or got them, and they said, "Go to hell, you s— — — b—!" That is the only sense in which I used that language at all; I remember when I went to the police office with Irving, and came away with Irving and Kearns—it was Monday afternoon.

All the complaint I ever made was the one I made that Saturday night; they had, in the police station, up at the Tombs, asked me two or three times about the collision; and the warrants were issued, so far as I know, all that night; they were both arrested; both arrested, so far as I know, from what occurred that night.

Cross-examined by Mr. Benedict: 345

I did not, as early as Wednesday of that week, (Wednesday would be the 13th) tell Mr. Coffin, or anybody else, that my counsel was Mr. Campbell, and that he advised me not to sign the protest; I told him that the Insurance Co., had told me to come there and get the protest; they told me not to sign any protest for any lawyer; "all you want to do is, to state that you had the boat yourself, and your wife and child were drowned; and not blame anybody;" they said I was not competent to judge who was to blame; I don't know when they employed counsel; I had not employed my counsel at that time; I had not conversed with Mr. Campbell at all, I and my brother came down and went to see Mr. Campbell; I forget when it was; I did not tell them that Mr. Campbell was my counsel.

I did come and talk to Mr. Campbell about this matter; I don't know when it was; it was afterwards; it was after that time; Mr. Campbell appeared for my brother at the proceedings at the Tombs; he was employed by my brother; I believe my brother got him to appear there; I believe I did not ask
346 him; I believe my brother did; I won't swear whether I did or not.

The defendant Austin puts in evidence the rules of the Board of Commissioners, established by the Board of Pilot Commissioners of the Harbor of New York, for vessels passing each other, also the following sections of the Revised Statutes of the United States.

Consented by counsel that above reference is sufficient.

The defendant Austin rests

The Court.—Consider all the rules in that are applicable.

The rules are as follows:

RULE I.

347 When steamers are approaching each other "head and head," or nearly so, it shall be the duty of each steamer to pass to the right, or on the port side of the other; and the pilot of either steamer may be first in determining to pursue this course, and thereupon shall give, as a signal of his intention, one short and distinct blast of his steam-whistle, which the pilot of the other steamer shall answer promptly by a similar blast of his steam-whistle and thereupon such steamers shall pass to the right, or on the port side of each other; but if the course of such steamers is so far on the star-board of each other as not to be considered by the pilots as meeting "head and head," or nearly so, or if the vessels are approaching each other in such a manner, that passing to the right (as above directed) is deemed unsafe by the pilot of either vessel, the pilot so first deciding shall immediately give two short and distinct
348 blasts of his steam-whistle, which the pilot of the other steamer shall answer promptly by two similar blasts of his steam-whistle and they shall pass to the left, or on the starboard side of each other.

> *Note.*—In the night, steamers will be considered as meeting "head and head" so long as both the colored light of each are in view of the other. In the day a similar position will also be considered "head and head."

RULE II.

When steamers are approaching each other in an oblique direction, (as shown in diagram of the fifth situation,) they shall pass to the right of each other, as if meeting "head and head," or nearly so, and the signals by whistle shall be given and answered promptly, as in that case specified.

RULE III.

If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from the signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam-whistle; and if the vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage-way, until the proper signals are given, answered and understood, or until the vessels shall have passed each other. 349

RULE IV.

When steamers are running in a fog or thick weather, it shall be the duty of the pilot to cause a long blast of the steam-whistle to be sounded, at intervals not exceeding one minute, and no steamer shall in any case be justified in coming in collision with another vessel if it be possible to avoid it.

RULE V. 350

Whenever a steamer is nearing a short bend or curve in the channel, where, from the height of the banks or other cause, a steamer approaching from the opposite direction cannot be seen for a distance of half a mile, the pilot of such steamer, when he shall have arrived within half a mile of such curve or bend, shall give a signal by one long blast of the steam-whistle, which signal shall be answered by a similar blast, given by the pilot of any approaching steamer that may be within hearing.

Should such signal be so answered by a steamer upon the farther side of such bend, then the usual signals for meeting and passing shall immediately be given and answered; but if the first alarm signal of such pilot be not answered, he is to consider the channel clear, and govern himself accordingly.

RULE VI. 351

The signal, by blowing of the steam-whistle, shall be given and answered by pilots in compliance with these rules, not only when meeting "head and head," or nearly so, but at all times when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

N. B.—The foregoing rules are to be complied with in all cases, except when steamers are navigating in a crowded channel, or in the vicinity of wharves; under such circumstances, steamers must be run and managed with great caution, sounding the whistle, as may be necessary to guard against collision, or other accidents.

RULE VII.

All steamers rigged for carrying sail when under way, must
carry a bright white light at the foremast head, and all other
steamers must carry a bright white light on the stem or near
the bow, and another on the mast near the stern, or on the flag-
staff at the stern ; the last named being at an elevation of at
352 least twenty feet above all other lights upon the steamers ; all
steamers must carry a green light upon the starboard side,
and a red light on the port side.

> *Note.*—Steamers, although rigged for carrying sail, instead of the foremost head-light, may adapt the forward and stern lights provided for steamers not rigged for carrying sail, provided said lights are so arranged and placed on the vessel as to secure the contemplated object.
>
> *When at anchor*, a bright white light shall be exhibited, at least twenty feet above the surface of the water ; the lanterns so constructed and placed as to show a good light all around the horizon.

Rule VIII.

353 That when two steamers are approaching the Narrows, known as "Hell Gate," on the East River, at New York, side by side, or nearly so, running in the same direction, the steamer on the right or starboard hand of the other (when approaching from the west), when they shall have arrived abreast of the north end of Blackwell's Island, shall have the right of way, and the steamer on the left or port side of the other shall check her way and drop astern. In like case, when two steamers are approaching from the east and are abreast of Negro Point, the steamer on the right or starboard hand of the other shall have the right of way, and shall proceed on her course without interference, and the steamer on the port side of the other shall keep at a safe distance astern (not less than three lengths), until both steamers have passed through the difficult channel.

354 Rule IX.

Steam vessels, when towing other vessels, shall carry two bright, white mast-head light vertically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam vessels are required to carry ; and in addition to the lights herein referred to, when engaged in towing canal boats and barges, or both, as is customery on the Hudson and other rivers, white lights shall also be carried on the extreme outside of the tow on either hand, and also on the extreme after part of the same.

Rule X.

When steamers are running in a fog or thick weather, and the pilot elects to lay by, or, as it is usual to say, drift, or, if at anchor, with steam up, in the fair way of other steamers, it shall be the duty of the pilot to cause three distinct blasts of the steam whistle to be sounded at intervals not exceeding three minutes: Provided, however, that nothing herein shall be construed to, in any way, conflict with Rule IV, regulating fog signals when under way. 355

Note.—The object of this rule is to give timely notice to approaching steamers, that the steamer giving such signal is lying still, or at anchor, as the case may be, in thick weather.

1. The mast-head light of steamers rigged for carrying sail to be visible at a distance of at least five miles on a clear, dark night, and the lantern to be so constructed as to show a uniform and unbroken light, over an arc of the horizon of twenty points of the compass, viz: from right ahead to two points abaft the beam, on either side of the ship.

2. The stem and stern lights of steamers not rigged for carrying sail, to be visible at a distance of at least five miles on a clear, dark night, and the respective lanterns to be so constructed that the stem light shall show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, viz: from right ahead to two points abaft the beam, on either side of the ship, and that the stern lights shall show a uniform light all around the horizon. 356

3. The colored side lights to be visible at a distance of at least two miles on a clear, dark night, and the lanterns to be so constructed as to show a uniform and unbroken light, over an arc of the horizon of ten points of the compass, viz: from right ahead to two points abaft the beam, on their respective sides. 357

4. The side lights are to be fitted with inboard screens of at least three feet in length, (clear of the lantern,) to prevent them from being seen across the bow, the screens to be placed in a fore and-aft line with the inner edge of the side-lights, and in contact therewith.

Note 1st.—The object of carrying the bright white light at the foremast head of steamers rigged for carrying sail, is merely to intimate to other vessels the approach or presence of such steamers.

Note 2d.—The object of the colored lights required to be carried on all steamers is to indicate to other vessels the course or direction such steamer may be steering.

Note 3d.—The object of requiring steamers not rigged for carrying sail to carry a white stern light in connection with a white light on the stem or near the bow, is to provide (when vessel's rig will admit of it), by a central range
358 of lights, a method of determining more correctly the course that such vessel is steering.

RULE XI.

When steamers are running in the same direction, and the pilot of the steamer, which is astern, shall desire to pass on the right or starboard hand of the steamer ahead, he shall give one short blast of the steam-whistle as a signal of such desire and intention, and shall put his helm to port; and the pilot of the steamer ahead shall answer by the same signal, or, if he perfer to keep on his course, he shall make the necessary signals, and the boat wishing to pass must govern herself accordingly, but the boat ahead shall in no case attempt to cross her bow, or crowd upon her course.

Mr. Campbell, on the part of the defendant Austin, then
359 moved to dismiss the complaint as to him on the following grounds:

1. The facts proved are not sufficient to make a cause of action against him.

2. Under the testimony, admitting every fact sworn to by each and every witness to be true, a joint action against the defendant Austin and the defendant The Eastern Transportation Line cannot be maintained.

3. The evidence shows no joint act of negligence. If there were any acts of negligence by either defendant, the same were separate and distinct, and claims for damage against two defendants for such separate and distinct acts of negligence cannot be joined in one action.

360 4. The undisputed evidence shows that the "Parker," and those managing her, were free from negligence or fault.

5. Under the evidence, defendant Austin is not a proper party to the action.

6. That Mrs. Cooper was guilty of such contributory negligence, under the evidence, as renders it unlawful she should recover against Austin.

7. That the plaintiff himself undertook to help steer the "Grant," and was gulty of such contributory negligence that he cannot recover against Austin.

The Court overruled the motion on each ground separately.

The defendant Austin's counsel excepted separately on each ground.

Mr. Benedict:

I renew my motion to dismiss on behalf of the defendant, "The Eastern Transportation Line," on the ground stated at the end of plaintiff's case, and also, on the further ground that that the plaintiff was guilty of negligence in not having life preservers or life saving apparatus on the boat, whereby the woman could have saved her life: and the woman was guilty of negligence in not attempting to save her life by means of the fenders, etc. 361

(Denied. Exception entered.)

CHARGE.

Gentlemen of the Jury:

It is happily a rare occasion that a jury is called upon to investigate such a sad and distressing accident as this; and my experience teaches me that it has been impossible for you to have heard all the evidence in this case without having your feelings excited to pity for the misfortunes of this plaintiff. Now, I make the remark in order to say to you, and to impress upon you the fact that feelings of commiseration and sympathy have no place in a Court of Justice; your reason and judgment are addressed here as jurors, and not your feelings as men. 362

The fact that this was a distressing accident to this plaintiff, and the fact that a large amount of damages are claimed against these defendants, only make it more your duty to endeavor to carefully investigate this case and decide it exactly upon the merits.

Now my duty will simply be to point out to you the main issues which you are to determine as plainly and as simply as possible, and to state to you the rules which I deem to be applicable to the evidence that has been produced here.

This case has been tried with great zeal and vigilance upon all sides, and exhaustively, it seems to me, summed up, and therefore I shall make no allusion whatever to the facts, except so far as I may deem necessary, in order to illustrate some of the rules that I shall call to your attention in the course of my charge. 363

You will observe, in the first place, that this accident occurred in the Bay of New York, which is the common property of all—that is, every person had the right to use it as a common highway, and both of these defendants were rightfully there; that was their right: it was their duty, however, in using it, to observe due care and prudence in the use which they made of it, so as not to destroy the property or endanger the rights of any other person who was lawfully using it at that time.

Now, there are a great many conceded facts in the case which I shall mention; that the "Minnesota" was lying a short distance off the New York shore—some witnesses say half way to the Jersey shore:—that she was lying there at anchor; that there was a long tow being made up, going to
364 Albany, that was slightly moving—in motion upon the northeast or east of this tow (the "Grant's") nearer the New York shore than the "Minnesota"—that this boat, the "U. S. Grant," which belonged to the defendant, the Eastern Transportation Company, had been to the "Stakes," and had stipulated under contract to take this boat, the "Lee" in tow, and take her through the East River to the Sound, and that the "Parker" was engaged in making up the tow that was going up the North River; all these are conceded facts, and there is but is but very little dispute in the evidence except as to what occurred a short time prior to the accident, when the accident occurred, and what took place just after the accident.

Now, this action is what the lawyers term an action for negligence, and the burden of proof is upon the plaintiff to satisfy you, by a preponderance of evidence, that he has been damaged
365 by the negligence of the defendants; that is to say, in order to find a verdict against both, you must be satisfied that the plaintiff was without fault or negligence, and that both the defendants were guilty of negligence that resulted in the damages as alleged in the complaint: and right here let me say, that it is not necessary that both should be equally in your opinion.

If you shall find that both these defendants did some negligent act that contributed to this accident, and without which the accident would not have occurred, then they are both liable in this action for the full amount of damages that you shall find this plaintiff has sustained.

When the law says that a party is guilty of negligence, it means precisely this: that under the circumstances of that particular case, the party did some act which a prudent man would not have done, and which resulted in damage to the
366 party complaining; or that under the same circumstances of the case, the party charged omitted to take some precaution which a prudent man would have taken that would have prevented the accident.

Parties who are charged with negligence, and sought to be held liable, are not liable for any consequences which are not the direct result of their acts—that is, the remote result they are not accountable for. They are only accountable for that which results directly from their negligent acts.

You must apply that as a rule of law.

There is another rule of law that is enforced in common law Courts—it is, that when a plaintiff is guilty of any negligence that contributes to the accident, he cannot recover; and I propose to submit to you as questions of fact, to be found from the evidence, whether or not Captain Cooper or his wife or daughter, were guilty of any act of negligence under the circumstances, that result either in the collision or in the subsequent consequences which followed the collision; remembering, of course, this very reasonable rule of law, that every act of negligence must be construed under the circumstances in which it occurs, and in judging whether this woman should have done anything on that occasion to have saved her life, 367 you must consider all the circumstances, and it is for you to say, upon the evidence, whether she was guilty of any negligence which resulted in her death.

The claim upon the part of the defendants, is, that she ought to have provided some means to have kept afloat after the boat was struck by this schooner, and commenced to sink; but you have a right to consider all the circumstances under which she was placed; you have a right to consider the fact that she was a woman, and that her daughter was there with her on the boat. You have a right to consider in that connection that the same prudence, coolness and care which would be suggested to a party thinking it over cooly, with plenty of time to calculate the chances, is not to be applied to a party in the midst of impending danger.

Now, if you shall find that Captain Cooper was guilty of 368 negligence which resulted in this catastrophe, why, of course, he cannot recover, because he sues here for an act of negligence upon the part of these defendants, which, he claims, resulted in the death of his wife; and if he contributed to that death by any act of negligence upon his part, he cannot recover. You are to determine from the proofs, whether he committed any act of negligence that resulted in the loss of his wife on that occasion.

I believe it is conceded as a rule and as a fact, that the officers of the "Grant," at the time they took his boat in tow, took charge of her; that they superintended the lashing of her to the side of the "Coalport," and to the tug, (that is, the "Grant,") and that the "Lee" was, by the custom or rule, in charge of the party who took her in tow; and I charge you as matter of law, that there is no law requiring that a canal boat that is not 369 used for the purpose of transporting passengers, should be provided with life-preservers or life-boats, or any paraphernalia of that kind; at least, I am not aware of any such rule.

Now, these are the rules of law that you are to apply to the evidence on the subject of the liability of these parties.

But certain rules of navigation or of law respecting navigation, have been referred to here, and upon that point I desire to say in the first place, this: One of the great primary objects of this law, and the establishment of those rules, is to have a uniform system for navigation of the harbor for the benefit of all those who have occasion to use it, and to aid them in navigating the harbor safely at all times. For example, the rule in regard to blowing whistles, and giving signals, and as to how parties should act under certain circumstances; This is not only a great convenience, but it is a wise provision to carry out the spirit of the law, which is: To insure the safety of all those who shall have occasion to use the harbor in the navigation of vessels.

But, as I remarked to you at one time during the progress of
370 the trial, the law never requires impossibilities of a party; it is always reasonable in its application; yet, aside from that proposition, which is applicable to the general rules of law, I notice that the rules referred to have made provision to cover every case that could possibly happen in navigating the harbor.

Now, I read the note to rule six, which was read in your hearing, and which will illustrate this general proposition.

"The foregoing rules are to be complied with in all cases, ex-
"cept when steamers are navigating in a crowded channel or in
"the vicinity of wharves; under such circumstances steamers
"must be run and managed with great caution, sounding the
"whistle as may be necessary to guard against accidents."

That seems to be a special provision for a crowded state of the harbor, or when vessels are "run in the vicinity of wharves," where boats may be liable to shoot out at any time; but the
371 general principle of the law is applicable to all those who use the harbor as a common highway, so that they shall at all times exercise prudence and care, and see that, in their use of the harbor, they shall not infringe upon the right of any other person.

Now, perhaps, I ought to call your attention to one or two rules of evidence, applicable at this stage of the case.

Now, there has been an effort made to impeach the testimony of certain of the witnesses that were produced here for the plaintiff, including the plaintiff himself.

It is evidence of declarations which, it is claimed by the defendant, The Eastern Transportation Company, that he made at or about the time of the accident, and which are inconsistent with the statement that he has made here upon this trial.

372 Now, this evidence of declarations must and ought to be scrutinized with great care, because, as you are aware, it is somewhat difficult to recollect the exact words which a person has stated, after considerable time has elapsed. Of course, in such a case, you have to depend upon the memory of the person who undertakes to recount the declaration, as to the exact words that were used. But that rule does not apply to declarations taken down in writing and verified at the time.

In that case a declaration must be taken to mean precisely what is stated.

But here let me say, that those declarations are not put in as proof of any fact which is in issue before you here.

They are put in for the purpose of asking you to infer that if those declarations are in any respect contradicted, or inconsistent with the statements made by Captain Cooper upon the stand, that so far as his statement here has varied from those declarations, he has not stated the truth on this occasion; but, they are not evidence of any fact in the case, and they are not to be considered by you as establishing any fact as against the defendants, but they are put in for the purpose of impeaching Capt. Cooper.

It is also proper that you should consider the circumstances 373 under which these declarations were made, the condition of mind this plaintiff Cooper was in at the time they were made, and any other circumstances that will aid your judgment in determining, first: whether he made the declarations, or whether they are correctly reported, and whether they meant what it is claimed they did mean at the time they were made.

Now, to illustrate to you the uncertainty that sometimes arises from proof of declarations, I desire to call your attention to one piece of evidence in this case, to show you how one word in a declaration may change the whole meaning which was intended to be given by the party at the time it was made.

The Superintendent, McWilliams, says that Capt. Cooper told him, the morning after the accident, or early on Monday morning, that, substantially, he (Cooper) didn't blame anybody on the "Grant"—I do not undertake to give the exact language. 374 I am merely illustrating to you, and I caution you not to take my recollection as being the evidence in the case—but, as I understood it, McWilliams inferred from what Cooper told him then, that he did not blame anybody upon the "Grant" for this accident, and that they did all they could "*for*" him. Captain Cooper admits that a conversation occurred, and he calls another witness who says he was present at the time. He (Cooper) says he was careful of what he said; he didn't wish to excite any animosity, or something of that kind; he says that he told McWilliams that the captain of the "Grant" did all he could "*to*" him, so that the substitution of the word "*to*" for the word "*for*," changes the entire meaning of the whole expression.

Now, that is a pertinent fact in this case to illustrate the care with which a jury should view evidence of declaration, try to 375 find out exactly what the party said in the first place, the exact circumstances under which it was said, and what the party meant to convey by the expression which he did use.

I ought to say this about this word "blame." Assume that Captain Cooper, if you please, did use that word on different occasions; assume that the Eastern Transportation Company, and several of their witnesses, undoubtedly did receive the impression from Captain Cooper that their agents in the management of the "Grant" were not in fault; assume that he used the expression as they understood, and said they were "not to blame;" that is not conclusive in this case.

No matter what he said upon that subject, it is not very material unless the declarations are considered by you as a contradiction of some evidence which he has given here upon the trial. You are here investigating the fact of this collision; and if, as matter of fact and law, the defendants were in fault under the rules of law, the fact that Captain Cooper said they were not "to blame," does not shield them from liability, and it is no release from any liability, if any did attach prior to his making that statement.

376 There is another point which occurs to me here about those rules or regulations—as between the "Parker" and the "Grant" —all of those rules of navigation and law might have a strict application. If the "Parker" was suing the "Grant," or the "Grant" the "Parker," for damages resulting from the collision, it might well be that any technical rule of navigation might be invoked against the other, and held with great strictness; but in this case, I charge you that as against this Captain Cooper, who had engaged the "Grant" to take his boat in tow, that both of these captains—upon the "Grant," and upon the "Parker," were bound to use due diligence and prudence to prevent any accident happening to Mr. Cooper's boat while it was in charge of the "Grant," so that whether the "Grant" blew two whistles or blew three, at a particular time, or whether the "Parker" had any right to blow two immediately after blowing one, is not very 377 material, as against either, in case you shall find that from the time the "Lee" was taken in tow to the time of the drowning of this woman—either of those captains did any act which a prudent man would not have done under the circumstances. Then he is liable, and if both did such an act then both are liable.

Now, gentlemen, if I were going to determine this case as question of fact, I should take this course, and perhaps, if I state it to you, it may aid you somewhat in your deliberations. I would commence from the time that the "Grant" made fast to this tow, follow the course of these parties during each successive step, until the final act which resulted, as has appeared to you in the evidence, and see what was the "Grant," or those in the management of her, bound to do as soon as she had taken Captain Cooper's boat in tow.

There has been some little proof given that this tow was not 378 properly made up; but my impression is, that the weight of evidence is that the making up of the tow was discretionary, and that there was not such a discrepancy in the weight of the two boats which the "Grant" had upon each side, as to make her unmanageable. And, if she was not made unmanageable, then they had a right to make up this tow under the circumstances, according to their discretion.

But if the proof is sufficient to satisfy you that this accident resulted from the fact that the tow was not properly made up, if, in your judgment, there is proof of their having more weight on one side of the "Grant" than the other, so as to have made her unmanageable, you may regard that as an act of negligence, because they had, in undertaking to navigate the harbor of New York, put themselves in such a disabled condition, that they were not able to have the tow, and the boat having the tow in charge, under reasonable control.

Now, what was the Captain of the "Grant" bound to do, from the moment he took the boat in tow?

He had a right, as I assume, and I doubt not you will assume, as matter of fact, and it was his duty in the first place to select the course that he would take; I cannot see that he was bound to go on the west side of the "Minnesota," because there was 379 more room there; he had a right to select such a course as, under the circumstances, should seem to him safe and proper to get to his destination; the evidence is that he took a straight course towards the New York shore, and when he had got as far as he thought was necessary, he then turned to go down the river.

The next point of time is when the lights first appeared to each other on these boats that afterwards came in collision.

This is the evidence of the witnesses, on the part of The Eastern Transportation Company, and I am not aware that it is disputed anywhere but of that you are to judge; he, (Capt. Williams) says the first he saw was a white light upon the rigging on the forepart of this schooner, which the "Parker" had in tow, and he assumed it was a vessel lying at anchor.

Now, it is a question for you whether or not she was lying at 380 anchor at that time; undoubtedly the vessels had been made fast to each other, or were being lashed at the time the "Grant" came in sight; because, immediately after that, steam is discovered issuing from the smokestack of the tug, and the whistle is blown soon after. But was she at anchor? One witness says they were heaving in the anchor at the time of the collision, and that they had been heaving it in for some minutes; now, assume that she was at anchor, or that this Captain (Williams) had reasonable ground to believe that she was at anchor, did he do any act of negligence?

Did he properly navigate his boat with reference to that fact, if it was a fact; you are to say how he did navigate; he did bear down the river; but did he bear directly upon this boat? what he did do is for you to say; under the circumstances, was he guilty of any act of negligence? If the "Parker" was 381 lying at anchor, she could not take any measures to protect herself or to get out of the way, except by a look out or by means of signals, and the "Grant" was bound, if this boat was lying at anchor, stationary, and had not moved, the "Grant" was bound to avoid that boat; here let me say, in reference to a request, made upon the part of the defendant, Austin,

That the captain of the "Grant" was bound to go upon the right side of this vessel if she lay at anchor.

That request I refuse, and charge you that he had a right to go upon that side, which, in his judgment, was prudent and consistent with the object which he had in view; but he was bound to navigate his boat with proper care, and to so run as not collide with the "Parker," if she was lying at anchor.

There are great discrepancies in the evidence as to the time that elapsed from the time the lights were first seen to the time the first whistle was blown; as to the exact position of these boats, and also as to some minor circumstances of the case; and it may be well for me to say, in this connection, that witnesses seldom if ever agree in relating occurrences of this kind; one particular fact will make more impression upon the mind of
382 one witness than upon the mind of another; and if there is anything that witnesses vary upon honestly, it is as to the time that elapses between two events which happen under exciting circumstances.

However it is, there is great discrepancy in the testimony as to the time which elapsed between various occurrences, which, it is admitted, did take place.

It will aid you somewhat, in deciding this case, to take into consideration all the facts: the fact that the tide was running in a particular direction; that it was about half ebb tide, or a little more; the speed of the tugs; the direction of these boats; the size of the boats; and any other fact that may aid you upon that subject.

The fact that there was a collision is not disputed, together with the fact that the "Minnesota" and the Albany tow were
383 in the vicinity, is also a conceded fact.

The discrepancies in the statements of the witnesses must be accredited by you, either to a want of recollection, or a difference in judgment, unless you shall find that witnesses have been impeached, or contradicted in some other part of the case, or intended to tell that which was not true.

What was the duty of those two boats as between each other, and as regards their rights in harbor? I have already stated to you that the responsibility of properly navigating each of the boats, rested with the man who had the boats in charge.

I cannot see the necessity that there should be a man on the bow of the boat, called a look-out; but somebody was bound to look out, because they were navigating in a place, as you must infer from the evidence, where there were obstructions, because boats did lie at anchor there; and they were navi-
384 gating in a place that was being used by other parties, who had an equal right there with themselves.

Hence, as against this plaintiff, there was an equal responsibility upon both those captains to use due care in navigating their boats upon this occasion.

I believe there is no dispute that those boats had got within a certain distance of each other—it is for you to say how near they were—before any signals were given.

It is for you to say whether either or both of the parties are responsible under the rules that I have laid down.

It is conceded, as I remarked a moment ago, that the "Parker" did blow one whistle, which means to go the right. What was the "Parker" doing at that time? That she was making a little headway, I think there is no doubt.

But was she under full headway, or as much as possible, considering the size of the boat and the state of the tide? Was she in a condition to be controlled by those who had the management of the boat? Because it may make some difference in your conclusion, if she was at anchor up to this time; but of that you are to judge.

It does not appear, that she had any other light than this bright light, and what signals were given, were given by the 385
whistles of the "Parker," and answered by the whistles of the "Grant." The "Parker" did give one one whistle to go the right, and that was assented to on the part of the "Grant," and it seems to be conceded that both did attempt to go to the right.

Now I charge you here, as matter of law, that when the "Parker" blew the first whistle to go to the right, it might well be, that if the "Grant" undertook to go to the right, and there was a collision, the "Grant" might be excused as against the "Parker."

But in the same connection, I charge you, as against this plaintiff, that when the "Parker" blew this whistle to go to the right, the captain of the "Grant" was bound to look at all the surrounding circumstances as a prudent and careful man, and see and determine, under those circumstances, whether it 386
was safe to answer the "Parker's" first whistle, and attempt to go to the right.

The reason of that rule is this: that if the "Parker" undertook to tell him to go to the right, and he assented, and a collision occurred, why the "Parker" could not complain, because the "Parker" requested the "Grant" to go to the right; but as against the plaintiff, whose boat the "Grant" had undertaken to tow around into the Sound, Mr. Cooper had a right to assume that this captain would exercise due prudence and care to take him around there in safety.

The same rule applies to the two whistles that were given; you are to determine whether the "Grant" blew two or three, and so far as that will aid you in arriving at a verdict, you will apply the same rule I have just stated.

Now we come to the time when the evidence is somewhat con- 387
flicting—that is, at the time of the accident.

It seems to me, that there is no conflict in the testimony in this respect, that when these boats struck each other, the stern of the schooner was swinging around towards the New York shore, and that is proved not only by the witnesses who saw it, but it seems to be a fair conclusion from the physical signs which have been disclosed in regard to the accident itself.

The schooner, it seems, struck the bow of this right hand boat, which was the furthest boat on the starboard side, three or four feet from the stem.

I am not aware that there is any dispute as to what took place after the accident, except as to the launching of the small boat.

The captain of the "Grant" says, he ordered his men to lower the small boat, and the mate says that he informed the captain that they had got another boat off the "Coalport," and that they were going after those parties.

Now, if the captain of the "Grant," up to this time, had been guilty of no act of negligence, which contributed to this accident, why of course so far he would be entitled to a verdict, 388 and the same also applies to the captain of the "Parker;" but if, after the boats struck, he omitted to take any precaution which a prudent man under the circumstances would have taken, and which might have saved the lives of this plaintiff's wife and child, why then he would be liable in this action. That is conceded.

Did he do all that a reasonably prudent man should have done under the circumstances, after this collision occurred? Of course you are not to apply the strictest rule, as I remarked upon the question of contributory negligence occurring under such circumstances, for you must understand this was an exciting occasion, and that hurry and dispatch were required. You will also consider the time that elapsed between the striking of the boat, her breaking loose from the "Grant," and the time of her sinking. But you are to say whether the captain, or 389 those in charge of the "Grant"—from the evidence—did omit any precaution which a prudent man would have taken under the circumstances, then you can find the owners of the "Grant" liable upon that ground.

I believe I have covered pretty much every point.

Several requests have been handed up, and it may be necessary that I should run them over, in order to see that I have covered every proposition as requested.

This is a request on the part of The Eastern Transportation Company (reads): "That the plaintiff cannot recover against "The Eastern Transportation Co., unless the jury are satisfied "that there was negligence on the part of the captain of the "'Grant' in her navigation, or in the measures which were "taken or omitted to save the life of Mrs. Cooper after the collision."

390 That I have charged.

Here is one I think I have charged; but, for additional safety, I will read it:

"That if the jury believe that previous to the sounding of the "whistles by the 'Parker,' the 'Parker' was so placed with "her tow that they showed to those on the 'Grant' but one "white light, there was no negligence on the part of the captain of the 'Grant' in considering the light to be on a vessel at anchor, and acting accordingly."

That I have charged you already. If all he saw was the light, he was bound to act on what he did see. The question is whether he did act properly, assuming that this was a vessel lying at anchor.

"That the 'Parker' and her tow being in such a position as "to be meeting the 'Grant' head on, or nearly head on, the "'Parker' blew one whistle, when at such a distance the captain of the 'Grant' thought the two vessels could pass by, "each going to the right. The captain of the 'Grant' was "also required by law to also blow one whistle, and port his "wheel, and there was no negligence in his doing so."

That I have charged you. 391

"That after the captain of the 'Grant' had thus answered "with one whistle, it was negligent in the person in charge of "the 'Parker' to blow two whistles, and attempt to pass on the "opposite side."

That I leave to you as question of fact.

"That if, when the 'Parker' blew two whistles, the captain "of the 'Grant' thought that there was not room enough between the boats for them to pass to the left, it was his duty "to stop and back his engine, and to give three whistles, and "that, if he did so, under such circumstances, he was not "negligent in so doing."

That I charge you.

Mr. Campbell.—I except to that.

The Court (reading): 392

"That if the collision was due to the change of purpose on "the part of the person in charge of the 'Parker,' The Eastern "Transportation Company are entitled to a verdict in their "favor, unless the jury are satisfied that there was negligence "on the part of the officers and crew of the 'Grant,' in what "they did or omitted to do after the collision."

That I have charged you.

Mr. Campbell.—I ask your Honor to charge that request of mine as to whether those rules can be varied by custom.

The Court.—I charge they cannot be.

Mr. Campbell.—I ask your Honor to charge that if the "Grant" answered the two bells—answered the two whistles that were sounded by the "Parker"—that then they were 393 bound to go according to that.

The Court.—Well, I refuse to charge that as against Mr. Cooper.

Mr. Campbell.—Well, I ask it as against the other.

The Court.—Well, I will charge that, as it is not very material. I will read the rule.

"When steamers are approaching each other, head and head, "or nearly so, it shall be the duty of each steamer to pass to "the right, or to the port side of the other, and the pilot of "either steamer may be first in determining to pursue this "course, and thereupon shall give. as a signal of his intention,

"one short and distinct blast of his steam-whistle, and there-
"upon such boats shall pass to the right or on the port side of
"each other. But if the course of such steamers is so far to
"the starboard of each other as not to be considered by the
"pilots as meeting head and head, or nearly so, or if the ves-
"sels are approaching each other in such a manner, that pass-
"ing to the right as above directed, is deemed unsafe by the
394 "pilot of either vessel, the pilot so first deciding shall immedi-
"ately give two short and distinct blasts of his steam-whistle
"which the pilot of the other shall answer promptly by two
"similar blasts of his steam-whistle, and they shall pass to the
"left or on the starboard side of each other. In the night
"steamers will be considered meeting head and head so long as
"both the colored lights of each are in view of the other. In
"the day, a similar position will be considered head and
"head."

Now, the counsel for defendant Austin, asks me to construe this a matter of law, as follows:—

"That the construction of the first rule of the Inspectors'
"Rules, (which I have just read) does not allow of a right to
"change from an effort to pass to the left, to an effort to pass
"to the right, after the signals for passing to the right have
395 "been exchanged."

That is probably so, except in a case of particular exigency. If a signal has been given, for instance, to go to the left and has been assented to by the other party, then it isn't competent or proper, and this rule shouldn't be construed so that the party can capriciously or suddenly make a change; but I charge you under the general rule of law, that if the party should suddenly see some obstruction which rendered it impossible to safely pass in that direction, that it is competent for the party to blow or give such signal as will prevent a collision. In such a case it might be safe to blow three whistles and back.

Mr. Campbell.—I except to that.

The Court.—I believe I have covered all the points at issue, gentlemen.

396 *Mr. Campbell.*—I ask you to charge that he could.

The Court.—I refuse, except as I have charged on that point.

One question about the damages, gentlemen: This suit is brought to recover $5,000, and only includes the loss of this Captain Cooper's wife. It is based upon the statute which makes parties liable when a person's death is caused by their negligence. If by the negligent or wrongful act a person's death is caused, the party, by whose neglect the death occurs, is made liable to pay a sum not exceeding $5,000, as pecuniary damages.

You have heard all the circumstances of this case, as to the condition in life of these parties and the service which this woman was to this man, as a wife and helpmeet, in a pecuniary point of view; and if you find for the plaintiff, against both those corporations, you will bring in a verdict for such damages as you shall say that he suffered pecuniarily, not exceeding the sum of $5,000.

If you find that only one of these parties is liable, then you will bring in precisely such a verdict against that party; and if neither are liable, then your verdict will be for both defendants. 397

A Juror.—Your Honor means to say that the sum against all the parties cannot exceed $5,000?

The Court.—Yes; it cannot exceed $5,000.

A Juror.—Then they are in the nature of co-defendants?

The Court.—They are both sued, but defend separately; each claims for himself that he is not liable, and says nothing about the other party; each for himself claims that he is excused. That is the case.

The defendant Austin excepted to that part of the charge, as follows:

"The plaintiff cannot recover against The Eastern Transportation Company, 398 unless the jury are satisfied that there was negligence on the part of the captain of the "Grant" in the navigation, or in the means which were taken to save the life of Mrs. Cooper after the collision.

That the defendant Austin excepted to that part of the charge commencing on page 35, of No. 15 of the stenographer's minutes, with word "that" in quotations, after the word "it," and ending with the word "accordingly," before that page 36, and enclosed in brackets, and is as follows:

"That if the jury believe that, previous to the sounding of
"the whistles by the 'Parker,' the 'Parker' was so placed with
"her tow that they showed to those on the 'Grant' but one
"white light, there was no negligence on the part of the 'cap-
"tain' of the 'Grant' in considering the light to be on a vessel
"at anchor, and acting accordingly."

The defendant Austin also excepted to that part of the charge 399
on page 37, same book, commencing with the word "that," after word "fact," and ending with "doing," before "that," same page, and enclosed in brackets, and which is as follows:

"That if, when the 'Parker' blew two whistles, the captain
"of the 'Grant' knew that there was not room enough between
"the boats for them to pass to the left, it was his duty to stop
"and back his engine, and to give three whistles; and that, if
"he did so under such circumstances, he was not negligent in
"so doing."

The defendant Austin also excepted to that part of the charge commencing with word "that," on page 37 of said book, after word "reading," and ending with word "collision," on page

38, before the word "that," which is enclosed in brackets, and is as follows:

"That the collision was due to the change of purpose on the "part of the person in charge of the 'Parker;" The Eastern "Transportation Company are entitled to a verdict in their "favor, unless the jury are satisfied that there was negligence "on the part of the officers and crew of the 'Grant,' in what 400 "they did or omitted to do after the collision."

The counsel for defendant Austin, asked the Court to charge as follows:

"If the 'Grant' answered the two whistles of the 'Parker' "with two whistles, then the 'Grant' was bound to turn to the left."

The Court refused so to charge.

Counsel for Austin excepted.

Mr. Benedict,—I desire to take my exceptions to portions of your Honor's charge; I except first to that portion of the charge where the Court says there is no rule of law requiring canal-boats to have life-saving apparatus.

Also, to the statement, that the statements sworn to by Capt. Cooper at the time of the accident, are not evidence of facts.

401 Also, to those portions of the charge where the Court says that as to Cooper, the rules were not the same, and didn't have the same application as they had between the two boats.

Also, to that part of the charge where I understood the Court to say, whether the "Grant" blew two whistles, or blew three, at a particular time, or whether the "Parker" had any right to blow two immediately after blowing one, is not very material, &c.

Also, to the charge, that if the jury are satisfied that the collision resulted from having more weight upon one side of the tow than the other, that they can find for the plaintiff against the "Grant."

Also, where the Court said, if the captain of the "Grant" did bear right down, and if the other boat was at anchor, stationary, and had not moved, he was bound to avoid her, any way.

402 Also, to where his Honor said: "It is for you to say how near they got before any whistle was blown, and whether they both or either were responsible for being so near at the time."

I except also, to where the Court charged, that although the rule required the "Grant" to go to the right, as against the "Parker," the plaintiff had a right to assume that he should use due care, aside from what the rule stated. That also applies to the two whistles.

I except also to the Court's charge of my sixth request, which he charged with a modification.

I except also to the Court's refusal to charge each of my requests, and to each modification which the Court made, and to all my requests where the Court failed to charge as requested, I also except.

Counsel for the defendant, The Eastern Transportation Line, requested the Court to charge the jury as follows:

1. That the plaintiff was himself negligent in not having his boat provided with a life-preserver, or a small boat, or other appliance, by means of which his wife might have been kept afloat till the small boat reached her.

(Denied, except is charged. Exception.) 403

2. That Mrs. Cooper was guilty of negligence in making no effort, by means of the fenders and ropes, which were on the canal-boat's deck, to keep herself afloat till the small boat came to her.

(Denied. Question of fact to be left to jury. Exception.)

(If the above or either of them is refused.)

3. That if the jury are satisfied, that if the plaintiff had provided this boat with life-preservers or appliances for saving life, the life of Mrs. Cooper might have been saved, the plaintiff cannot recover.

Denied, except as charged. Exception.

4. That if the jury are satisfied that Mrs. Cooper, by use of 404 the fenders on the deck of the "Lee," and the ropes there, might have kept herself afloat till the small boat reached her, the plaintiff cannot recover.

Denied. Exception.

5. That the plaintiff cannot recover against the Eastern Transportation Company, unless the jury are satisfied that there was negligence on the part of the captain of the "Grant" in her navigation, or in the measures which were taken or omitted to save the life of Mrs. Cooper after the collision.

Charged.

6. That if the jury believe that previous to the sounding of the whistle by the "Parker," the "Parker" and her tow were so placed that they showed to those on the "Grant" but one 405 white light; there was no negligence on the part of the captain of the "Grant" in considering the light to be on a vessel at anchor and acting accordingly.

Charged.

7. That if the "Parker" and her tow, being in such a position as to be meeting the "Grant" head on, or nearly head on, the "Parker" blew one whistle, when at such a distance that the captain of the "Grant" thought the two vessels could pass by, each going to the right, the captain of the "Grant" was required by law to blow one whistle and port his wheel, and there was no negligence in his doing so.

Charged.

8. That after the captain of the "Grant" had thus answered with one whistle, it was negligent in the person in charge of the "Parker to blow two whistles and attempt to pass on the opposite side.

Denied. Question of fact for the jury. Exception.

9. That if, after the "Grant" had answered the single whistle with a single whistle, the person in charge of the "Parker" 406 had thought that the vessels would not pass each other, by acting in accordance with the whistles which had been exchanged, it was then his duty not to blow two whistles, but to blow three whistles, and stop and back his engine, and if he did blow two whistles under such circumstances, and starboard his wheel, he was negligent in so doing.

Denied. Question of fact. Exception.

10. That if, when the "Parker" blew two whistles, the captain of the "Grant" thought that there was not room enough between the boats for them to pass to the left, it was his duty to stop and back his engine, and to give three whistles; and that if he did so under such circumstances, he was not negligent in so doing.

407 Charged.

11. That if the collision was due to the change of purpose on the part of the person in charge of the "Parker," The Eastern Transportation Line are entitled to a verdict in their favor, unless the jury are satisfied that there was negligence on the part of the officers and crew of the "Grant" in what they did or omitted to do after the collision.

Charged.

12. That after the collision, the captain of the "Grant" was not required to cut adrift the boats still in tow, and thus endanger the lives of those on board them, and that his not doing so was not negligence on his part.

(Denied excepted as charged. Exception).

408 13. That if the jury are satisfied that the sending of the "Coalport's" boat was considered by the captain and crew of the "Grant" to be the speediest means of getting assistance to the people on the "Lee," there was no negligence in choosing those means, and no negligence in not taking other measures which were not considered to be so speedy.

(Denied, except as charged; Exception).

The jury rendered a verdict in favor of the plaintiff, against both defendants, for $4,000.

At a Special Term of the Supreme Court in and for the County of Kings, held at the Court House, in the City of Brooklyn, on the 19th day of May, 1877.

Present—Hon. CALVIN E. PRATT, *Justice.*

HOBART COOPER, Administrator of MARY ANN COOPER, deceased, *Plaintiff,* *against* JEREMIAH J. AUSTIN, and THE EASTERN TRANSPORTATION LINE, *Defendants*	*Order denying new Trial.*

409

A motion having been made by the defendant, The Eastern Transportation Line upon the minutes of the Judge, to set aside the verdict herein, and grant a new trial upon the exceptions taken, and because said verdict is for excessive damages and otherwise contrary to law and evidence and against evidence, it is

Ordered, That said motion be and the same is hereby denied.

It is also ordered, that said defendant have a stay of proceedings for thirty days after judgment, to make and serve case and perfect appeal herein. 410

A copy.

JOHN DELMAR,
Clerk.

CIRCUIT SUPREME COURT,

KINGS COUNTY, May 19th, 1877.

Present—Hon. CALVIN E. PRATT, *Justice.*

HOBART COOPER, administrator, &c., *against* JEREMIAH J. AUSTIN, and an.	*Order denying new trial.*

The defendant Jeremiah J. Austin, having made a motion for 411
a new trial in this action on the minutes of the Court, after hearing Mr. T. C. Campbell for the motion, and Mr. E. Cook against the same, the respective counsel for the parties.

It is ordered the said motion be, and hereby is denied.

A copy.

JOHN DELMAR,
Clerk.

8. That after the captain of the "Grant" had thus answered with one whistle, it was negligent in the person in charge of the "Parker to blow two whistles and attempt to pass on the opposite side.

Denied. Question of fact for the jury. Exception.

0. That if, after the "Grant" had answered the single whis-
406 tle with a single whistle, the person in charge of the "Parker" had thought that the vessels would not pass each other, by acting in accordance with the whistles which had been exchanged, it was then his duty not to blow two whistles, but to blow three whistles, and stop and back his engine, and if he did blow two whistles under such circumstances, and starboard his wheel, he was negligent in so doing.

Denied. Question of fact. Exception.

10. That if, when the "Parker" blew two whistles, the captain of the "Grant" thought that there was not room enough between the boats for them to pass to the left, it was his duty to stop and back his engine, and to give three whistles; and that if he did so under such circumstances, he was not negligent in so doing.

407 Charged.

11. That if the collision was due to the change of purpose on the part of the person in charge of the "Parker," The Eastern Transportation Line are entitled to a verdict in their favor, unless the jury are satisfied that there was negligence on the part of the officers and crew of the "Grant" in what they did or omitted to do after the collision.

Charged.

12. That after the collision, the captain of the "Grant" was not required to cut adrift the boats still in tow, and thus endanger the lives of those on board them, and that his not doing so was not negligence on his part.

(Denied excepted as charged. Exception).

408 13. That if the jury are satisfied that the sending of the "Coalport's" boat was considered by the captain and crew of the "Grant" to be the speediest means of getting assistance to the people on the "Lee," there was no negligence in choosing those means, and no negligence in not taking other measures which were not considered to be so speedy.

(Denied, except as charged; Exception).

The jury rendered a verdict in favor of the plaintiff, against both defendants, for $4,000.

At a Special Term of the Supreme Court in and for the County of Kings, held at the Court House, in the City of Brooklyn, on the 19th day of May, 1877.

Present—Hon. CALVIN E. PRATT, *Justice.*

HOBART COOPER, Administrator of MARY ANN COOPER, deceased, *Plaintiff*, 409
against
JEREMIAH J. AUSTIN, and THE EASTERN TRANSPORTATION LINE, *Defendants*
Order denying new Trial.

A motion having been made by the defendant, The Eastern Transportation Line upon the minutes of the Judge, to set aside the verdict herein, and grant a new trial upon the exceptions taken, and because said verdict is for excessive damages and otherwise contrary to law and evidence and against evidence, it is

Ordered, That said motion be and the same is hereby denied.

It is also ordered, that said defendant have a stay of proceedings for thirty days after judgment, to make and serve case and perfect appeal herein. 410

A copy.

JOHN DELMAR,
Clerk.

CIRCUIT SUPREME COURT,

KINGS COUNTY, May 19th, 1877.

Present—Hon. CALVIN E. PRATT, *Justice.*

HOBART COOPER, administrator, &c.,
against
JEREMIAH J. AUSTIN, and an.
Order denying new trial.

The defendant Jeremiah J. Austin, having made a motion for 411 a new trial in this action on the minutes of the Court, after hearing Mr. T. C. Campbell for the motion, and Mr. E. Cook against the same, the respective counsel for the parties.

It is ordered the said motion be, and hereby is denied.

A copy.

JOHN DELMAR,
Clerk.

SUPREME COURT,

KINGS COUNTY.

HOBART COOPER, administrator of the goods, chattels and credits which were of MARY ANN COOPER, deceased,

412 *Plaintiff,*

against

THE EASTERN TRASPORTATION LINE and JEREMIAH J. AUSTIN,

Defendants.

Judgment,
May 25, 1877.

The issues in this action having been brought on for trial before Mr. Justice C. E. Pratt and a jury, at a Circuit Court, held on the first Monday of May, 1877, and the issues having been tried, and a verdict for the plaintiff having been duly rendered on the 19th day of May, 1877, for the sum of four thousand dollars, on which amount the plaintiff is by law entitled to interest from October 9, 1875, the time of the death of plaintiff's intestate, and an allowance of five per cent. having been granted to plaintiff as additional costs, and the costs having
413 been adjusted at five hundred and forty-six and $\frac{57}{100}$ dollars: Now, on motion of Messrs. Childs & Hull, attorneys for said plaintiff, it is adjudged that Hobart Cooper, administrator of the goods, chattels and credits of Mary Ann Cooper, deceased, plaintiff, recover of The Eastern Transportation Line and Jeremiah J. Austin, said defendants, four thousand dollars, found by the jury, together with four hundred and fifty-five and $\frac{60}{100}$ dollars interest, and five hundred and forty-six and $\frac{57}{100}$ dollars costs and disbursements, amounting in all to the sum of five thousand and two dollars and seventeen cents (\$5,002$\frac{17}{100}$).

JOHN DELMAR,
Clerk.

414

SUPREME COURT,

KINGS COUNTY.

HOBART COOPER, administrator, &c., of MARY ANN COOPER, deceased,

Plaintiff,

against

THE EASTERN TRANSPORTATION LINE and JEREMIAH J. AUSTIN,

Defendants.

Notice of Appeal by The Eastern Transportation Line.

GENTLEMEN.—Please take notice, that The Eastern Transportation Line, one of the above named defendants, hereby appeals to the General Term of this Court from the judgment entered against it herein on the twenty-fifth day of May, 1877, for the sum of five thousand and two $\frac{17}{100}$ dollars ($5,002$\frac{17}{100}$), and also from the order denying said defendant a new trial herein, and from each and every part of said judgment and order.

Dated New York, June 4th, 1877.

Yours, etc.,

BENEDICT, TAFT & BENEDICT, 415
Att'ys for the Defendant,
The Eastern Transportation Line,
No. 64 Wall street.

To CHILDS & HULL, Esqs.,
Plaintiff's Attorneys.

To JOHN DELMAR, Esq.,
Clerk.

SUPREME COURT,

KINGS COUNTY.

HOBART COOPER, as Administrator of the goods, chattels and credits which were of MARY ANN COOPER, deceased, 416
Plaintiff,
against
THE EASTERN TRANSPORTATION LINE AND JEREMIAH J. AUSTIN,
Defendants.

Notice of Appeal by Jeremiah J. Austin.

You will please take notice, that the defendant Jeremiah J. Austin, one of above defendants, hereby appeals to the General Term for the Second Department or District, in the above-entitled action, in above-named Supreme Court, from the judgment entered in this action on the 25th day of May, 1877, in the Clerk's Office, in the County of Kings, in favor of plaintiff, as such administrator, against the defendant above named, 417 for the sum of $5,002.17, and from the order made in said action on the 19th day of May, 1877, denying the motion of said Jeremiah J. Austin for a new trial, on the minutes of the Judge presiding on the trial, and from the whole of said judgment and order.

Dated New York, June 25, 1877.

GEORGE S. WILKES,
Attorney for Defendant Austin.

To Messrs. CHILDS & HULL,
Attorneys for Plaintiff, and
J. DELMAR, Esq.,
Clerk Kings County, N. Y.

At a General Term of the Supreme Court of the State of New York, held at the Court House, in the City of Poughkeepsie, on the 14th day of May, 1878.

Present:—Hon. JOSEPH F. BARNARD, *Chief Justice.*
JASPER W. GILBERT, } *Justices.*
JACKSON O. DYKMAN, }

418 HOBART COOPER, as administrator of the goods, chattels and credits which were of MARY ANN COOPER, deceased,
Respondent,
against
THE EASTERN TRANSPORTATION LINE and JEREMIAH J. AUSTIN,
Appellants.

The appeal of the defendant, The Eastern Transportation Line, from the judgment entered herein, in the office of the Clerk of the County of Kings, on the 25th day of May, 1877, for the sum of $5,002.17, and also from the order denying said defendant a new trial herein, having been brought to a hearing
419 at this General Term, and Jeremiah J. Austin, one of the appellants, having failed to appear—

On motion of Messrs. Childs & Hull, of counsel for the respondent, and after hearing Benedict, Taft & Benedict, Esquires, of counsel for the appellant, ordered that the said judgment and order denying a new trial be and the same are in all things hereby affirmed with costs.

Enter,
J. F. BARNARD,
Presiding Judge.

Enter in Kings County,
ALLESAR BUTTS,
Deputy Clerk.

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420 SUPREME COURT,

KINGS COUNTY.

HOBART COOPER, as administrator, &c., of MARY A. COOPER, deceased,
Respondent,
against
THE EASTERN TRANSPORTATION LINE and JEREMIAH J. AUSTIN.
Appellants.

} *Judgment,*
May 23d, 1878.

The appeal of the above named defendants, The Eastern Transportation Line and Jeremiah J. Austin, from the judgment entered herein, in the office of the Clerk of the County of Kings, on the 25th day of May, 1877, for the sum of $5,002.17, and also from the order made herein, denying said defendants motion for a new trial, having been brought to a hearing at the General Term of this Court, and the annexed decision of the said Court thereon having been made and filed, whereby said judgment and order are in all things affirmed with costs, and the costs of the respondent having been taxed at the sum of one hundred and six and $\frac{55}{100}$ dollars, (\$106$\frac{55}{100}$.)

Now on motion of Childs & Hull, attorneys for the said 421
respondent, it is adjudged and decreed that the said judgment, entered herein on the 25th day of May, 1877, for the sum of \$5,002.17 and the orders denying motion for a new trial be and the same hereby affirmed. And it is further adjudged and decreed that the respondent do have judgment against the appellant, The Eastern Transportation Line, for the sum of one hundred and six and $\frac{55}{100}$ dollars.

JOHN DELMAR,
Clerk.

(Endorsed.)
Filed May 23d, 1878, at 10:10 A. M.

SUPREME COURT,
KINGS COUNTY. 422

HOBART COOPER, Administrator of MARY ANN COOPER, deceased,
Respondent,
against
THE EASTERN TRANSPORTATION LINE impleaded with JEREMIAH J. AUSTIN.
Appellant.

GENTLEMEN .

Please take notice that The Eastern Transportation Line hereby appeals to the Court of Appeals, from the judgment entered against it herein on the twenty-third day of March 1878, for the sum of one hundred and five and $\frac{55}{100}$ dollars costs, and affirming the judgment entered herein on the 25th day of May, 423
1877, for the sum of five thousand and two $\frac{17}{100}$ dollars, and also affirming the order denying said appellant a new trial herein, and from each and every part of said judgment and order.

Dated New York, May 27th, 1878.

Yours, &c.,
BENEDICT, TAFT & BENEDICT,
Attorneys for Appellants, The Eastern Transportation Line,
64 Wall Street, N. Y.

To
CHILDS & HULL, Esqs.,
Respondent's Attorneys.
JOHN DELMAR,
Clerk.

STATE OF NEW YORK,

County of Kings, ss.:

I, John Delmar, Clerk of the County of Kings, and Clerk of of the Supreme Court of the State of New York, in and for said county, (said Court being a Court of Record,) do hereby certify that I have compared the foregoing with the original judgment roll and Notice of Appeal, on file in my office, and that the same 424 are true transcript thereof and of the whole of such original.

[L.S.] In testimony whereof, I have hereunto set my hand and affixed the seal of said County and Court, this 28th day of June, 1878.

JOHN DELMAR,
Clerk.

At a Special Term of the Supreme Court of the State of New York, held at the County Court House, in the city of Brooklyn, on the 15th day of November, 1878.

Present.—Hon. CALVIN E. PRATT, *Justice.*

HOBART COOPER, as Administrator,
425 &c., of MARY ANN COOPER, deceased,
Plaintiff and Respondent,
against
THE EASTERN TRANSPORTATION LINE, and JEREMIAH J. AUSTIN,
Defendants and Appellants.

An appeal having been taken by the defendant and appellant, The Eastern Transportation Line, to the Court of Appeals, from the judgment of the General Term of this Court, entered in this action on the 23d day of May, 1878, and such appeal having come on to be heard at a Term of said Court of Appeals, held at the Capitol, in the city of Albany, on the 20th day of September, 1878; and the said Court having, on the said 12th day 426 of November, 1878, rendered judgment thereon, wherein they, in all things, affirmed the said judgment appealed from, with costs of the appeal; and the record and proceedings therein having been remitted to this Court from said Court of Appeals. Now, on reading and filing the the said remittitur, and on motion of Messrs. Childs & Hull, attorneys for the respondent, it is ordered, that the judgment of the said Court of Appeals be, and the same is hereby made the judgment of this Court, and that the same be executed according to law.

Granted Nov. 15, 1878.

C. E. P.,
J. S. C.

JOHN DELMAR,
Clerk.

COURT OF APPEALS.

State of New York, ss.:

Pleas in the Court of Appeals, held at the Capitol, in the City of Albany, on the 12th day of November, in the year of our Lord, one thousand eight hundred and seventy-eight, before the judges of said Court. 463

Witness.—The Hon. SANFORD E. CHURCH,

Chief Judge, Presiding,
E. O. PERRIN, *Clerk.*

Remittitur, November 13, 1878.

HOBART COOPER, Adm., &c.,
Respondent,
Against
EASTERN TRANSPORTATION LINE IMPLEADED,
Appellant.

Be it remembered that on the first day of July, in the year of our Lord, one thousand eight hundred and seventy-eight, 464 The Eastern Transportation Line, the appellant in this action, came here into the Court of Appeals by Benedict, Taft & Benedict, its attorneys, and filed in the said Court a notice of appeal, and return thereto from the judgment of the General Term of the Supreme Court of the State of New York; and Hobart Cooper, administrator &c., to the respondent in said action, afterwards appeared in said Court of Appeals by Childs & Hull, his attorneys, which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed. Whereupon the said Court of Appeals, having heard this cause argued by Mr. Robert D. Benedict, of counsel for the appellant, and Mr. Erastus Cook, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the Supreme Court, appealed from in this action, be in all things affirmed. And it is further ordered and adjudged, 465 that the respondent recover against the appellant costs of appeal to this Court.

And, it is further ordered, that the record aforesaid, and the proceedings in this Court be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs, as aforesaid, and stand in full force, strength and effect.

And hereupon, as well as the notice of appeal and return thereto, aforesaid, as the judgment of the Court of Appeals aforesaid by them given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the justices thereof, &c.

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

466

COURT OF APPEALS.

CLERK'S OFFICE.

ALBANY, Nov. 13th, 1878, *ss.*:

[L. S.] I hereby certify that the preceding record contains a correct transcript of the preceedings in said action in the Court of Appeals, with the papers originally filed therein attached thereto.

E. O. PERRIN,
Clerk.

467

468

Endorsed: Supreme Court. Hobart Cooper, as administrator, &c., of Mary Ann Cooper, deceased, plaintiff and respondent, *against* The Eastern Transportation Line, *et al.*

Order making the judgment of the Court of Appeals the judgment of this Court.

Filed Nov. 15, 1878.

427

N. Y. SUPREME COURT,

KINGS COUNTY.

HOBART COOPER, as Administrator, &c., of MARY ANN COOPER, deceased,
Plaintiff and Respondent,
against
THE EASTERN TRANSPORTATION LINE and JEREMIAH J. AUSTIN,
Defendants and Appellants.

Disbursements	$23 46
Costs	90 00
	$113 46

428

Judgment, November 1878.

An appeal having been taken by the defendant and appellant, The Eastern Transportation Line, to the Court of Appeals, from the judgment of the General Term of this Court, entered herein on the 23d day of May, 1878, affirming the judgment of the Circuit Court, entered in favor of the plaintiff on the 25th day of May, 1877, and also affirming the orders made herein, denying the motion of the above defendants for a new trial; and said appeal having come on to be heard at a term of said Court of Appeals, held at the Capitol in the city of Albany, on the 20th day of September, 1878, and the said Court having on the 12th day of November, 1878, rendered their decision thereon, wherein they in all things affirmed the said judgment so appealed from, 429 with costs of the appeal, and the records and proceedings in said Court of Appeals having been remitted to this Court, and the said remittitur having been filed, and an order having been entered herein, making the judgment of the Court of Appeals the judgment of this Court, and directing that the same be enforced according to law, and the costs and disbursements of the respondent having been adjusted by the clerk of this Court at the sum of one hundred and thirteen dollars, on motion of Messrs. Childs & Hull, attorneys for the plaintiff and respondent.

It is ordered and adjudged, that the judgment so appealed from be, and the same hereby is in all things affirmed, and that the said plaintiff and respondent recover of the said defendant and appellant, The Eastern Transportation Line, the sumof one hundred and thirteen dollars costs and disbursements, and that the said plaintiff and respondent have execution against the said defendant and appellant therefor.

Endorsed: N. Y. Supreme Court, Kings County. Hobart Cooper, as administrator, &c., of Mary Ann Cooper, deceased, plaintiff and respondent, against The Eastern Transportation
430 Line and Jeremiah J. Austin, defendants and appellants.

Judgment of affirmance.

Filed Nov. 18, 1878, at 2:03 P. M.

Know all men by these presents, that we, the Eastern Transportation Line, Samuel W. Milbank and William E. Gladwich, are held and firmly bound unto Hobart Cooper, administrator, &c., of Mary Ann Cooper, deceased, in the just and full sum of ten thousand five hundred dollars, to be paid to the said Hobart Cooper, administrator, etc., of Mary Ann Cooper, deceased, his certain attorneys, successors, executors, administrators, or assigns, to which payment, well and truly to be made, we bind
431 ourselves, our heirs, executors and administrators jointly and severally by these presents, sealed with our seals and dated this 21st day of November, 1878.

Whereas, lately in the Supreme Court of the State of New York, in and for the County of Kings, in a suit depending in said Court, between Hobart Cooper, administrator, &c., of Mary Ann Cooper, deceased, plaintiff, and The Eastern Transportation Line, defendant, judgment was rendered against the said defendant, and the said defendant, having obtained a writ of error, and filed a copy thereof in the Clerk's Office of said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Hobart Cooper, administrator, &c., of Mary Ann Cooper, deceased, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next.

432 Now, the condition of the above obligation is such that if the said The Eastern Transportation Line shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of }
SAMUEL H. VALENTINE. }

THE EASTERN TRANSPORTATION LINE,
Per S. W. MILLBANK, *Treas.* [L. S.]
WM. E. GLADWISH, [L. S.]
SAMUEL MILLBANK. [L. S.]

City and County of New York, ss.:

Samuel W. Millbank and William E. Gladwish, being severally duly sworn, says each for himself that he is a resident of the State of New York, and is worth the sum of twenty-one thousand dollars over and above his debts and liabilities, and exclusive of property by law exempt from execution.

WM. E. GLADWISH, 433
SAMUEL W. MILLBANK.

Sworn to before me, this 21st day of November, 1878.

SAMUEL H. VALENTINE,
[SEAL] *Notary Public, N. Y. Co.*

City and County of New York, ss.:

On the 21st day of November, 1878, before me personally appeared Samuel W. Millbank, and William E. Gladwish to me personally known to be the persons described in, and who executed the above bond and acknowledged severally each for himself that he executed the same. 434 And the said Samuel W. Millbank, known to me to be treasurer of the said, The Eastern Transportation Line, acknowledged that he executed the same as and for the deed of said corporation in pursuance of due authority, and being by me duly sworn did depose and say that he resides at No. 13 E. 24th street, in the City of New York. That he signed the above bond in pursuance of due authority from said, The Eastern Transportation Line, and the seal of said corporation was thereto affixed in pursuance of like authority.

SAMUEL H. VALENTINE,
Notary Public, N. Y. Co.

Approved as sufficient for the purpose of a *supersedias.*

November 25, 1878. 435

WARD HUNT,
Asso. Just. Sup. Ct., U. S.

Endorsed: Supreme Court of the United States. The Eastern Transportation Line, plaintiff in error, *agst.* Hobart Cooper, administrator, &c., of Mary Ann Cooper, deceased, defendant in error.

Security on signing citation, and allowance of writ of error.

Filed Nov. 26, 1878.

The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of New York, in and for the County of Kings, wherein The Eastern Transportation Line is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why 436 speedy justice should not be done to the parties in that behalf.

Witness the Honorable Ward Hunt, Associate Justice of the Supreme Court of the United States, at Washington, this second Monday of October, 1878.

WARD HUNT,
Asso. Just. Sup. Ct., U. S.

To
HOBART COOPER,
Administrator of Mary Ann Cooper, deceased.

(Endorsed.)

437

SUPREME COURT OF THE UNITED STATES.

THE EASTERN TRANSPORTATION LINE,
Plaintiff in Error,
against
HOBART COOPER, administrator, &c., of MARY ANN COOPER, deceased,
Defendant in Error.

CITATION.

Filed November 26th, 1878.

438

BENEDICT, TAFT & BENEDICT,
Attorneys for Plaintiff in Error,
No. 64 Wall Street, N. Y.

Service of within citation admitted this
16th day of November, 1878.

CHILD & HULL.
Respondent's Attorneys.

UNITED STATES OF AMERICA, ss:

The President of the United States of America.

To the Judges of the Supreme Court of the State of New York:

GREETING: Because in the record and proceedings, as also in the rendition of the judgment of a plea which is, in the said Court, before you, or some of you, being the highest Court of 439 law and equity of the said State, in which a decision could be had in the said suit between Hobart Cooper, administrator, &c., of Mary Ann Cooper, deceased, plaintiff, and The Eastern Transportation Line, defendant, wherein was drawn in question the validity of a Statute of the United States, and the decision was against its validity, or, wherein a right, privilege or immunity was claimed, under a Statute of the United States, and this decision was against the right, privilege or immunity claimed, a manifest error hath happened, to the great damage of The Eastern Transportation Line, as is said, and as appears by its complaint. We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings 440 aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the Justices aforesaid, on the second Monday of October next; that the record and proceedings aforesaid, being inspected, the said Justices of the Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, ought to be done.

Circuit Court Seal.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this second Monday of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one 441 hundred and third.

(Allowed.)

WARD HUNT,
Asso. Jus., Sup. Ct., U. S.

B. LINCOLN BENEDICT,

Clerk of the Circuit Court of the United States of America, for the Eastern District of New York, in the Second Circuit.

Endorsed: Supreme Court of the United States. Herbert Cooper, administrator, &c., of Mary Ann Cooper, dec'd, defendant in error, *ads.* The Eastern Transportation Line, plaintiff in error. Writ of error.

BENEDICT, TAFT & BENEDICT,
Attorneys for Plaintiff in Error,
No. 64 Wall St., N. Y.

442 Filed Nov 26, 1878.

SUPREME COURT
OF THE UNITED STATES.

THE EASTERN TRANSPORTATION LINE,
Plaintiff in Error,
against
HOBART COOPER, administrator, &c., of Mary Ann Cooper, deceased,
443 *Defendant in Error.*

STATE OF NEW YORK, *Kings County. Clerk's Office,* } ss.:

In obedience to the writ of error hereto annexed, issued out of the Supreme Court of the United States, on the second Monday of October, one thousand eight hundred and seventy-eight, the annexed transcript of the record and proceedings, with copies of all papers and proceedings in the above suit filed, and remaining on record in the Supreme Court of the State of New York are hereby certified and sent to the Justice of the Supreme Court of the United States, at the Capitol at Washington, together with the said writ and citation, as in the said writ of error is directed.

444 Witness, Hon. JOSEPH F. BARNARD, Presiding Justice of the Supreme Court of the State of New York, in and for the second Judicial Department, at the City of Brooklyn, County of Kings, this third day of February, in the year one thousand eight hundred and seventy-nine.

Seal.

JOHN DELMAR,
Clerk of the Supreme Court of the State of New York, for the County of Kings.

HOBART COOPER,
vs.
EASTERN TRANSPORTATION LINE and
JEREMIAH AUSTIN.
Opinion of General Term.

DYKMAN, *J.* This action is brought to recover damages for the death of the plaintiff's wife under the following circumstances: 445

The plaintiff employed the Transportation Company to tow the canal boat "N. L. Lee," of which he was the master, from a place called the Stakes, off Jersey City in New York, Harbor to New Haven. The canal boat was loaded with coal and had on her the plaintiff's wife and two daughters.

The boat sent to take her in tow was the "U. S. Grant." She made fast to the "Lee" about eleven o'clock of the night of October 9th, 1875, and then had in tow four boats, two on each side, the "Lee" and the "Coalport," being on the starboard side, with the "Lee" as the outside boat. The tug and the tow thus composed, left the Stakes about eleven o'clock, with the tide running ebb, the weather clear and the night clear, and took a direction across the North River. When near Pier No. 1, on the New York side, the steamtugboat "John N. Parker," was discovered approaching from below 446 with the schooner "George B. McFarlane," on her starboard side; as they approached, the "Grant" was going directly down the river and the "Parker" was coming directly up; as they were then head and head, the "Parker" blew one whistle, which signified her intention to pass to the right, and this was answered by one from the "Grant," which assented to the course. Very soon, however, the "Parker" blew two whistles, which meant to go to the left, and the "Grant" then blew two whistles and almost immediately then and there stopped her engines and commenced to back water, when the schooner came in collision with the stem of the "Lee," and carried her away from the tow and cut a hole in her bow, so that she sank, and carried down the wife and one of the daughters of the plaintiff, both of whom were drowned.

The case was tried at the Circuit, and the jury rendered a 447 verdict against both defendants, for four thousand dollars.

The defendant Austin was the owner of the "Parker," and the Transportation Company owned the "Grant," and both owners are liable to third parties for injuries sustained by reason of faulty navigation and want of care of the persons in charge of the boats, and they are liable jointly for an injury which results from the concurrent negligence of both boats.—Colegrove *vs.* N. Y. and N. H. and N. Y. and H. R. R. Companies, 20 N. Y., 492.

To enable the plaintiff to maintain this action, it was necessary for him to show that the servants of both these defendants were guilty of negligence, which resulted in the death of his wife, and that he was free from negligence contributing to that result.

The waters of New York Harbor are at all times alive with vessels whose courses and destination are so various as to render navigation very difficult, and to require the exercise of the utmost care and vigilance.

In view of the dangers and difficulties in this regard, certain
448 rules and regulations have been prescribed, to which vessels navigating those waters are required to subordinate their movements.

So far as they are applicable to the case, these rules require that when steamers are approaching each other "head and head," or nearly so, it is the duty of each steamer to pass to the right, and the pilot of either steamer may be the first in determining to pursue that course, and thereupon give one short, distinct blast of his steam-whistle as a signal of his intention so to do, which the pilot of the other steamer shall answer promptly by a similar blast, and then both steamers shall pass on the port side of each other. But if the vessels are approaching each other in such a manner that passing to the right is deemed unsafe, the pilot so first deciding shall give two short distinct blasts of his steam-whistle, which the pilot of the other steamer
449 shall answer promptly by two blasts in the same way, and then they shall pass on the starboard side of each other.

"If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from the signals being given or answered erroneously or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam-whistle, and if the vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage way, until the proper signals are given, answered and understood, or until the vessels shall have passed each other." These rules are plain and practical and easy of application, and if faithfully observed and carried out, will prevent all disasters. Navigators who violate them and fail to follow them, do so at the peril of
450 their own lives and the lives of others, and also make themselves liable for all damages which may ensue.

In this case, when the steamers approached each other, both pilots determined to go to the right, and announced their determination to each other, and there was therefore no failure on the part of either to understand the course or intention of the other. Either this determination to go to the right was right, or it was wrong. If it was right, it should have been adhered to, and if it was wrong it should not have been made. There was nothing then to excuse a hasty or immature judgment.

Both vessels were running slowly, the water was smooth, the wind was still and the night was clear and light. When the pilot of the "Parker" blew two whistles, he signified his intention then to pass to the left. This was a change which was entirely unjustified by any change of circumstances, and entirely inconsistent with good judgment and proper care, and the "Grant" obeyed no rule whether she answered with two or three whistles. The duty of her pilot then was, if he was in doubt, to signify the same immediately by giving several short and rapid blasts of the steamer-whistle, and stopping his vessel. He did stop, but it was too late. The fatal blunder which 451 caused the calamity, was the determination by both to go to the right, if it was not practicable, and the change of that determination, if it was. Either was negligence, and both were guilty of it.

Was the plaintiff guilty of any negligence which contributed to the disaster? His boat was under the supreme control and direction of the officers of the "Grant," so far as it was necessary to fulfil the contract to tow her. They could locate her where they pleased in the tow, go fast or slow, and direct her whole course of navigation, and on these subjects he could have no voice or word. At the same time the owners of the boat did not occupy towards the plaintiff the relation of common carrier, and did not assume all the liabilities which that relation would impose. Alexander *v.* Greene, 3d Hill, 9.

The plaintiff took no direction or control of his boat after 452 the "Grant" took her in charge, and he cannot be charged with any negligence in her failure to succor his drowning wife and child. The case discloses nothing that the plaintiff could have done to avoid the calamity, and it was a perfectly proper thing for the Court to do, to submit the question to the jury.

There were objections to the admission of testimony, and numerous requests to charge and exceptions to the charge as made, and all have been examined without giving such examination in detail in this opinion, it is deemed sufficient to say that no error has been found as the result of such examination.

This case involves only questions of fact, all of which were fairly submitted to the jury, and we see no reason for disturbing the verdict.

The judgment must be affirmed, with costs.

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COURT OF APPEALS.

HOBART COOPER, Administrator, &c.,
Respondent,
vs.
THE EASTERN TRANSPORTATION LINE,
Appellant.

Opinion of Court of Appeals.

CHURCH, *Ch. J.*

I am not prepared to assent to the construction put upon the charge, by the learned counsel for the appellant, that the rules of navigation prescribed by, and made in pursuance of Federal laws, had a different application and force as to the two steamers, from what they should have between the plaintiff and the two steamers; that is, that there was a difference in the sense claimed. I think the learned judge intended only to instruct the jury, that in a contest between the two steamers, one of them might be precluded by way of estoppel from insisting upon 454 negligence in the other in acquiescing in the course indicated by its own signals. The case in hand will illustrate the position. The "Parker" gave a signal blast of the whistle, which was answered by a single blast from the "Grant." This indicated that the steamers were to go to the right, which is the rule when steamers are to meet "head and head," or nearly so, which was the case in this instance. But this is not an unbending rule, to be rigidly observed under all circumstances, because circumstances may exist to render it impracticable, and the rule itself provides that if it is deemed unsafe, then the steamers shall go to the left after an exchange of two blasts of the whistle. There are also excepted from the operation of the rule, cases where steamers are navigating in a crowded channel, or in the vicinity of wharves. Whilst an observance of the general rule would be presumptively right, and would throw 455 the *onus* of proving that it was negligent, upon whoever challenged its propriety, yet if the surrounding circumstances were such as to render it impracticable or unsafe, and these circumstances were known to those in charge of the vessels, or by the exercise of proper care they might have known them, negligence might be imputed, unless the general rule was departed from.

The Judge charged as it respects the rules and regulations, "as between the "Parker" and the "Grant," all of those rules of navigation and law might have a strict application. If the "Parker" was sueing the "Grant," or the "Grant" the "Parker" for damages resulting from the collision, it might well be that any technical rule of navigation might be invoked against the other, and held with great strictness, but in this case I charge you that as against this, Captain Cooper, who 456 had engaged the Grant to take his boat in tow, that both of these captains upon the "Grant" and upon the "Parker," were bound to use due diligence and prudence to prevent any accident happening to Mr. Cooper's boat, while it was in charge of the "Grant," so that whether the "Grant" blew two whistles or blew them at a particular time, or whether the "Parker" had any right to blow two immediately after blowing one, is not very material as against either, in case you shall find that from the time the "Lee" was taken in tow to the time of the drowning of this woman, either of those captains did any act which a prudent man would not have done under the circumstances." In substance the effect of this change is that the respective managers of the two steamers were bound to exercise proper care and diligence, in the management of their

vessels, whether such can require an observance of or departure from the general rules or not, and irrespective of the effect of their force, if the contest was between themselves. I do not think this was error. A blind adherence to the rules is not required by the rules themselves, and it is clear that care and diligence should be used in determining whether in a given case they should be strictly pursued. The rule is that vessels meeting "head on," should pass to the right, but care must be 457
exercised to determine whether this is safe and proper, and if one steamer signals to that effect, the other steamer must also exercise due care in deciding whether it is safe and proper to do so, and this is all that the judge intended to charge.

The question whether there was any evidence to charge the "Grant" with negligence, down to the time of the collision, is not that I can discover presented in this case. It is not presented on the motion for a non-suit, because it was claimed that the "Grant" was negligent after the collision in not cutting loose from the tow, and in not lowering its own boat.

The Court submitted the question to the jury in general terms, whether either or both steamers were negligent, and the exception pointed to the remarks of the judge above quoted, touching the difference between the force of the rules as to the plaintiff, and between the respective steamers. The requests to 458
charge, assumed that the jury might find that the "Grant" was negligent in its navigation before the accident, and the judge was not requested to charge that there was no evidence upon which the charge of negligence could be founded. There is, therefore, no exception presenting this point, and it is not needful to consider that question. But aside from that, it is not so clear as to warrant its being taken from the jury, that negligence might not be imputed to the "Grant" for assenting to a change of course, and not insisting upon continuing to the right which might have prevented the collision, providing the jury had found that two whistles were blown, signifying such assent, and as to which there was a conflict of evidence.

Again, the "Grant" knew if he assented, that the other steamer would change her course to the left, and although it was proper for her to slack her speed, yet if she had changed 459
her helm to starboard, instead of letting it swing, it is not improbable that the boats would have cleared. The managers of the boats should not be held to any rigid rule, but the case is not one in which it can be decided as a legal question, that they were not both guilty of negligence.

The request on the part of the "Grant," to charge that the blowing of two whistles by the "Parker," was negligent as a matter of law, is not available. In the first place, the jury have found the "Parker" negligent by its verdict, and that is not appealed from, and in the next place, I think it was a question of fact for the jury to determine. It is not *per se* negligent to change the direction of passing from right to left. It must depend upon the circumstances of each case, and although looking at the circumstances developed on the trial, it is quite clear that a change was impracticable, and that it resulted disastrously, yet I think it was a question of fact, and not of law.

Error is alleged from the charge of the judge that certain declarations of the plaintiff having been put in and received for the purpose of impeachment, could not be regarded as evidence of the facts upon the issues in the case. The fact is not
460 denied that they were received for that purpose, and I think the conclusion of the judge follows. It is unnecessary therefore to consider whether declarations made by the plaintiff before his appointment as administrator, would be admissible as evidence of the facts which they tend to prove.

The other exceptions to the charge and refusals to charge as requested, have been examined, and are not regarded as tenable. They relate to the question of contributory negligence, and we think that there was no error committed in respect to them.

No substantial error was committed upon questions of evidence.

This Court has no power to review the case for the purpose of determining the weight of evidence. If there is no evidence to sustain the verdict, it is a question of law, but it must be
461 distinctly presented and an exception taken. As we have seen this was not done upon the question of the negligence of the "Grant" up to the time of the collision.

The judgment must therefore be affirmed.

"Folger, Rapallo, and Andrews JJ., concur; Hand, J., not voting, Miller and Earl, JJ., absent at argument."

A copy, H. E SICKELS.
Reporter.

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BURGOYNE, Law Printer, 29 Rose Street.
Law Telegraph No., 73.

Supreme Court of the U. S.

OCTOBER TERM, 1878.

THE EASTERN TRANSPORTATION LINE,
Plaintiff in Error,

against

HOBART COOPER as Administrator of MARY A. COOPER, Deceased,
Defendant in Error.

No 1089

Brief of the Defendant in Error, in Support of motion to Dismiss the Writ of Error for want of Jurisdiction, or to affirm on the ground that it is manifest the writ was taken for delay only; and that the question on which Jurisdiction (if any) depends is so frivolous as not to need further argument.

This action is brought by plaintiff as the administrator of the estate of his wife, Mary Ann Cooper, against the defendant, the Eastern Transportation Line, the owners of the tug-boat "U. S. Grant," and the defendant, Austin, the owner of the tug "Parker," for damages resulting from the death of Mary A. Cooper, caused by the wrongful acts, negligence and default of these defendants in the navigation of the said tugs, "Parker" and "Grant," in the North River, opposite the Battery, in the City of New York, on the night of the 9th day of October, 1875.

The plaintiff in error defended the action below, on the ground that its negligence did not cause the injury, but that the injury resulted from the negligence of its co-defendant, Austin. The issues were tried before the Court and a jury.

STATEMENT OF FACTS.

On the night of October 9th, 1875, the canal-boat "N. L. Lee," of which plaintiff was master, was taken in tow by the tug "U. S. Grant," at the "Stakes" off Jersey City, in the harbor of New York, to be towed to New Haven.

The canal-boat "Lee" was laden with coal, and, together with three other boats, was made fast to the "Grant," the tow being made up with two boats fastened to and on either side of said tug, their bows projecting ahead of the bow or stem of the tug "Grant," the "N. L. Lee" being the outer boat on the starboard side of the tug.

The tug and tow thus composed left the "Stakes" about eleven o'clock, P. M. The tide was ebb, the weather calm, the moon had gone down and the night was clear.

The tug took a direction across the North River, and when a short distance above piers one and two on the New York side, the tug "John M. Parker" was seen below, heading up stream, having fastened to her, on her starboard side, the schooner "George B. McFarland," the stem of which projected ahead of that of the "Parker." The "Parker" was at this time a little below pier one of the North River.

The tide was ebb, of the strength of about 2½ to 4 knots fol. 157), and the "Grant" making 65 or 70 revolutions in a minute, which would propel her with her tow five miles an hour in slack water. The schooner "McFarland," and the Canal-boat "Lee," with great force and violence collided, the stem of the schooner striking the starboard bow of the Canal-boat about three feet abaft the stem, the colliding vessels being nearly *head on*, but forming something of an angle on the westerly side.

Soon after the "Parker" was first sighted by the "Grant," and when the tugs were about 500 yards apart (fols. 208–209), the "Parker" being seen on the starboard bow of the "Grant" about one point to the right (fol. 209), the "Parker" gave one blast of the whistle, which meant to go to the right, which was answered by one from the "Grant," and the "Grant" immediately hove her helm hard a-port (fol. 209), and kept it so until the "Parker" blew two whistles, which meant to go to the left. The testimony is conflicting as to whether the "Grant" answered the two whistles from the "Parker" by two whistles or by three, or whether the "Grant" did not answer the two whistles with two and then immediately sound three. It is conceded the "Grant" did sound three whistles. About half a minute after the three whistles were sounded, the collision occurred. Such was the momentum of the two tugs at the time of the collision, that the four strong lines fastening the Canal-boat in the tow were parted, and she was carried a distance of two hundred feet away from the tow and against the tide, and in a few moments sunk, drowning the plaintiff's wife and daughter.

At the time the whistles were blown, the "McFarland" was weighing her anchor, not fully under way (fol. 326).

At the moment of the collision, plaintiff, with one of his daughters, sprang from the deck of the Lee to the deck of the Coalport (the boat next the Lee in the tow), and was knocked down by the lines as they parted. Plaintiff at once asked the Captain of the Grant to cut loose his tow and back up his tug and save his wife and child, as his boat, the "Lee," was sinking. This the Captain refused to do, and said he could not let his tow "go to h—l."

The Captain of the Grant then tried to turn around his tow and go back to the Lee; but before he could do so, the Lee sank. (Cooper's testimony, fols. 33 to 42.)

Plaintiff claimed that each of the defendants were guilty of negligence. *First*, in the navigating of their respective tugboats; *secondly*, in not making any proper effort after the collision to save the life of the plaintiff's intestate.

The case involved only a question of fact, to wit, negligence; which question was fairly submitted to a jury (see Judge's charge, folio 362–408), who gave a verdict for $4,000.

The judgment was affirmed at the General Term of the Supreme Court (fol. 420, 421).

The Eastern Transportation Line alone appealed to the Court of Appeals, in which Court the judgment of the General Term was affirmed (p. 142; see opinion, folio 453).

The defendant, the Eastern Transportation Line, sued out a writ of error to the Court of Appeals of the State of New York.

The defendant in error now moves to dismiss the writ for want of jurisdiction.

POINTS.

I.

The record does not present a case to which Section 709, R. S., applies.

(1) The first clause of the section applies to a case where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity.

There is no pretense that the case involved, or that the decision below was adverse to the validity of any statute of the United States any more than of a treaty.

(2) The second clause is applicable to a case involving the validity of a statute or authority exercised under any State on the ground of their repugnancy to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity.

There was no such question in this case.

(3) It is believed that the only ground on which jurisdiction for this Court is invoked is that the plaintiff in error claimed immunity under Sec. 4405 of the Revised Statutes of the United States, which authorizes the Board of Supervising Inspectors to establish certain rules of navigation, and that the decision of the State Court is against that immunity, specially set up or claimed under the third subdivision of the section.

II.

The plaintiff in error, in its answer in the Court below, did not specially, or otherwise, set up or claim immunity under the statute of, or any authority exercised under, the United States, nor in any manner refer or allude to such statute or authority (pp. 5, 6, 7).

In the motion to dismiss the complaint, at the close plaintiff's case, the defendant's counsel did not set up or claim such immunity, or make any allusion to any statute of, or authority exercised under, the United States (fol. 176, p. 59).

The same is true as to the motion to dismiss, at the close of all the evidence (fols. 360, 361).

During the whole trial the counsel for the plaintiff in error not only did not set up or claim any such immunity, but he never alluded in any way to the United States or any Federal Statute or authority whatever.

The only reference made on the trial to the subject was by the counsel for Austin, the co-defendant, who defended separately, and whose case is not before this Court.

Austin's counsel, at fol. 346, put in evidence certain rules of the Pilot Commissioners of New York, and "also the following "sections of the Revised Statutes of the United States." This is the language of the record, and the only reference to the U. S. made on the trial. No sections were read or appear in the case, though the following entry appears: "Consented by coun-"sel that above reference is sufficient."

It seems to us quite impossible to hold that the Eastern Transportation Line set up and claimed immunity under Federal authority on the trial, or that the trial involved the validity of such authority and determined against the immunity.

III.

The exceptions to the charge taken by the plaintiff in error, and also to the refusal to charge as requested, related mainly to the question of negligence—the sole question in the case.

Those concerning the rules of navigation (fols. 401 and 402), referred exclusively to the rules adopted by the Pilot Commissioners, under the authority of the State of New York.

They were in reference to the whistle signals, for which no provision is made in the laws of Congress, except as fog signals, R. S. (U. S.), Sec. 4,233.

So that every question raised by the exceptions to the charge, so far as the record shows, involved only the lavs of the State. Not one exception is based upon, or is appropriate to any rule, regulation or Statute of the United States, or involves any privilege, or immunity under them.

IV.

The plaintiff in error is not aided by Sec. 4,235, which provides, until further provision is made by Congress, "all pilots in the bays, inlets, rivers, harbors, and ports of the United States, shall continue to be regulated in conformity with the existing laws of the States, respectively, wherein such pilots may be, or with such laws as the States may respectively enact for the purpose."

This provision was enacted in 1789. The Act of the Legislature of the State of New York, under which the rules of the Pilot Commissioners, establishing a system of whistle signals, was adopted, was passed in 1853, and subsequently amended.

The Act of 1879, permitting the States to establish their own pilot system, cannot be regarded as giving effect to the system, when established as an Act or regulation of the United States, for the purposes of Section 709.

(1) In *Gibbons* vs. *Ogden*, 9 Wheaton, 208. MARSHALL, *C. J.*, says:

"The act unquestionably manifests an intention to leave "this subject entirely to the States, until Congress should "think proper to interpose."

And on page 209, he shows that these State laws, relating to bays, harbors, etc., do not proceed from any power delegated to the States by Congress, but from their reserved powers.

(2) If it be claimed that the State law becomes a law of Congress by adoption, then the plaintiff in error encounters this difficulty:

By adopting the State law it is taken with the construction put upon it by the State judiciary. Judicial construction is as much the law as the legislative provisions.

An act of the Legislature, which is held by the highest judicial power in the State to be of no effect, is no law. It is the act as construed which constitutes the law, and this is what Congress has adopted by the Act of 1789.

(3) It follows that there can be no conflict between the State and the Federal law on this subject, for there is but one law, so far as appears by the record, and that must be construed and settled exclusively by the State.

(4) The same reason applies to this case that requires this Court in administering the common law or State laws to be governed by the decisions of the Courts in the States where the controversy arose.

The result is, that whatever decision the Court of Appeals has made as to the construction of the rules regulating whistle signals is the authoritative interpretation of those rules, and not subject to review by this Court.

V.

It cannot be claimed that any rules which may have been adopted by the Board of Inspectors under Section 4,405 of the Revised Statutes, were before the State Court for the purpose of claiming any rights under them.

The section, it is true, authorizes the adoption of certain regulations, and such regulations, when approved by the Secretary of the Treasury, shall have the force of law.

They are not, however, a law of which the Court can take judicial notice.

They do not prove themselves like a public statute, but must be proved like a private statute, and the sense of the provision is, that, when proved, they shall have the force of law.

U. S. vs. *Stearns*, 15 *Wend.*, 314.
Harker vs. *The Mayor, &c., of N. Y.*, 17 *Wend.*, 199.
Palmer vs. *Aldridge*, 16 *Barb.*, 131.

Not having been proved they are not in the case.

VI.

In the Court below the plaintiff in error claimed: That the Court had charged that the rules of navigation had a different application as between the Eastern Transportation Line and the plaintiff, from what they would have in an action between the two defendants for the same collision, and that this was error.

This alleged error was presented by the exceptions to the Judge's charge.

The exceptions are as follows (folio 401):

"Also, to those portions of the charge where the Court says that, as to Cooper, the rules were not the same, and didn't have the same application as they had between the boats."

"Also to that part of the charge where I understood the Court to say, 'whether the 'Grant' blew two whistles or blew three whistles, or blew three at a particular time, or whether the 'Parker' had any right to blow two immediately after blowing one, is not very material.'"

"I except also to where the Court charged, that although the rule required the 'Grant' to go to the right as against the 'Parker,' the plaintiff had a right to assume that he should use due care aside from what the rule stated. That also applies to the two whistles."

These exceptions refer to what the Judge said in his charge at folio 376, 385, 386, which was to the effect that with whatever strictness the two tugs would be held to the rules of navigation, in an action between themselves, *as against Capt. Cooper*, who had engaged the Grant to take his boat in tow, both the Grant and the Parker were bound to use due diligence and prudence to prevent any accident to Cooper's boat while in charge of the Grant, so that whether theGrant blew two whistles, or blew three at a particular time, or whether the Parker had any right to blow two immediately after blowing one, is not very material "*in case you shall find" they or either of them were guilty of negligence*, in which case the negligent party or parties would be liable for the damages occasioned by such negligence.

The language of the charge is clear and plainly instructs the jury, not that as to Cooper the rules were not the same and didn't have the same application as they had between the two boats, as the exception assumes, but that the question was that of *negligence*, and that whether the rules were observed or disregarded was subordinate to the question of *negligence*, and only important as bearing upon that question.

The third and last of the exceptions above cited, does not apply to any part of the Judge's charge.

It was evidently intended to apply to the paragraph in fol. 386.

But the rule which the Judge referred to was not the rule in the regulations, but the rule laid down by himself, in fol. 386, to the effect that as against this plaintiff, the Captain of the Grant, on hearing one whistle from the Parker, was bound before he answered it affirmatively, to determine for himself, in view of all the circumstances, whether he could safely undertake to go to the right, and there he states the reason of the rule thus laid down, and at the end uses this language: "But as against the "plaintiff, whose boat the Grant had undertaken to tow around "into the Sound, Mr. Cooper had a right to assume that this "Captain would exercise due prudence and care to take him "there in safety."

This is different in its whole scope and sense from the proposition imputed to the learned Judge by the exception, and the exception, therefore, is inapplicable, and fails to raise any Federal question.

It is submitted, however, that the direction was right according to the authorities before cited.

> *Hope* vs. *The East. Trans. Line*, 5 *Otto*, 297.
> Note to Rule vi., fol. 351.

It is thus manifest that not only was there no Federal question presented to the Court below, nor was the same in any manner passed upon by the Court below, nor was it necessary to the determination of the case that any Federal question should be passed upon.

VII.

Error was also predicated by the plaintiff in error in the Court below of the refusal of the Judge to charge the 8th and 9th requests to charge (fol. 406).

These requests were to direct the jury, that under the navigation rules relating to signals, in case they found certain facts, the "Parker" was guilty of negligence.

The exception can avail nothing, because the "Parker" *was* found guilty of negligence.

Moreover the request again erroneously assumes that the observance or non-observance of those rules is the only test of liability.

It is not *per se* negligent to change the direction of passing from right to left. It must depend upon the circumstances of each case. And although it is evident a change was impracticable, and that it resulted disastrously, it was a question of fact, and not of law.

The evidence on the question of the whistles was conflicting, and the plaintiff in error is concluded by the verdict of the jury. The claim of the plaintiff in error that a blind adherence to the rules affords him protection is thus rendered unavailing.

VIII.

The plaintiff in error also excepted to that portion of the charge in which the Court says: "There is no rule of law requiring canal boats to have life-saving apparatus," fol. 400, referring to the charge at fol. 369. This instruction was undoubtedly correct.

The law of Congress, requiring life preservers, applies only to barges carrying passengers. U. S. Rev. St., 874, § 4,492.

The "Lee" carried no passengers. She had none on board.

IX.

As has been shown, exceptions at folio 401 are not applicable to the charge, but misrepresent it. (See fols. 376–7; 385–6.)

The Court of Appeals, in the opinion of the Chief Justice, plainly shows that the Judge did not charge as the exception assumed, but that, instead of construing the rules of the Pilot Commissioners, the charge merely presented the question of negligence (fols. 453 to 461).

The whole case, by the pleadings, the evidence and the final decision of it on appeal, was simply a question of negligence, and did not involve any Federal law, rule or authority whatever.

X.

In order to give jurisdiction to this Court, it must appear by the record not only that a Federal question was involved, or that it may have been passed upon, but that it must have been and was actually passed upon, and that a decision adverse to the Federal authority was indispensable to the judgment rendered, and that without such adverse decision the judgment given was legally impossible.

Brown vs. *Atwell, Adm'r.*, 2 Otto, 327, and cases cited.
Home Ins. Co. vs. *City Council*, 3 do., 116.
Murray vs. *City of Charleston*, 6 do., 432.

Granting everything claimed by the plaintiff under the rules and regulations, the fact of negligence in the navigation found by the jury entitled the plaintiff below to the judgment.

The rules themselves contemplate many deviations in the interest of safety, which are left to the prudent discretion of the navigators, and in respect to which they must use proper care. Carelessness and negligence in this respect subject them to an action.

Rule 1, fol. 347; note to Rule 6, fol. 351.
Rule 24 of Sec. 4233 R. S. (U. S.)
Hope vs. *Eastern Transportation Line*, 5 Otto, 297.

XI.

Conceding that the navigation was in every way perfect and justified by the rules and regulations, there was still in the case a question of the negligence of the plaintiff in error, after the collision, by which the plaintiff's wife was left to perish.

It is legally possible, that the jury predicated their verdict upon this negligence, and this possibility is of itself sufficient to take the case out of the operation of Sec. 709, conferring jurisdiction of the writ of error.

This Court cannot review the verdict on this point. The decision of the State Court is final upon it.

XII.

Another question of fact appears, which, under the rules of the Pilot Commissioners, if found against the plaintiff in error, sustains the judgment. That is, whether the "Grant" blew two whistles in response to a like signal from the "Parker," and immediately after blew three (fols. 34–5, 106, 127). Negligence might well be predicated upon this assent to go to the left, when it was impossible, as was immediately acknowledged by giving three whistles.

It is manifest, therefore, that no Federal question was presented in the Court below, and still less that there was a decision adverse to any right or immunity claimed by the plaintiff in error.

The motion of defendant in error to dismiss for want of jurisdiction should be granted, or the judgment of the State Court affirmed. As the writ was obtained for delay only, any question on which jurisdiction depends is so frivolous as not to need further argument.

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U. S. Supreme Court.

THE EASTERN TRANSPORTATION LINE,
Plaintiff in Error,
vs.
HOBART COOPER, *as Administrator, &c.,*
Defendant in Error.

No. 1,089.

A motion is made to dismiss the writ of error in this case for lack of jurisdiction. On behalf of the plaintiff in error, we present, in opposition to the motion, the following brief and points.

STATEMENT OF THE CASE.

The suit was brought in the Supreme Court of New York State, by Hobart Cooper, as administrator of Mary Ann Cooper, his wife, to recover damages for her death, which occurred in consequence of a collision which happened off the Battery, in the port of New York, on the night of October 9, 1875, between the canal-boat "N. L. Lee," which, with other boats, was in tow of the steamtug "U. S. Grant," and a schooner named the "McFarland," which was in tow of the tug J. N. Parker. The suit was brought under the provisions of the Statute of the State of New York against the owners of the two tugs, the plaintiff in error in this case being the owner of the U. S. Grant, and J. J. Austin being the owner of the "J. N. Parker." The plaintiff, in the Court below, had a verdict against both defendants. The Eastern

Transportation Line alone appealed to the General Term of the Supreme Court, which affirmed the judgment, and an appeal was then taken to the Court of Appeals, which also affirmed the judgment. From that judgment, entered in accordance with that affirmance, this writ of error has been taken to this Court.

The 709th section of the Revised Statutes of the United States, provides that such a judgment of a State court may be re-examined by this Court upon a writ of error, "where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; or where any title, *right, privilege* or *immunity* is claimed under the Constitution, or any treaty or *statute of*, or commission held, or authority exercised under, the United States, and the decision is *against* the title, *right, privilege* or *immunity* specially set up or claimed by either party, under such Constitution, treaty, *statute, commission* or *authority*."

It is claimed on behalf of the plaintiff in error that this Court has jurisdiction to re examine this case, because it is one which is embraced within the latter clause of the language above quoted.

ASSIGNMENT OF ERRORS.

The following are the errors which we assign, and for which we ask the consideration of this Court:

First.—In that the Judge charged the jury (fol. 369) "that there is no law requiring that a canal-boat that is not used or the purpose of transporting passengers should be provided with life-preservers or life-boats or any paraphernalia of that kind."

Excepted to at fol. 400.

Second.—In that the Judge charged the jury as follows (fol. 376): "There is another point which occurs to me here, about those rules or regulations—as between the 'Parker' and the 'Grant'—all of those rules of navigation and law might have a strict application. If the 'Parker' was suing the 'Grant,' or the 'Grant' the 'Parker,' for damages resulting from the collision, it might well be that any technical rule of navigation might be invoked against the other, and held with great strictness; but in this case I charge you, that as against this Captain Cooper, who had engaged the 'Grant' to take his boat in tow, that both of these captains, upon the 'Grant' and upon the 'Parker,' were bound to use due diligence and prudence to prevent any accident happening to Mr. Cooper's boat while it was in charge of the 'Grant.'"

Excepted to at fol. 401.

Third.—In that the Judge charged (fol. 376–7), "that whether the 'Grant' blew two whistles or blew three at a particular time, or whether the 'Parker' had any right to blow two immediately after blowing one, is not very material, as against either; in case you shall find that from the time the 'Lee' was taken in tow to the time of the drowning of this woman, either of those captains did any act which a prudent man would not have done under the circumstances, then he is liable, and if both did such an act, then both are liable."

Excepted to at fol. 401.

Fourth.—In that the Judge charged (fol. 381) that "if the 'Parker' was lying at anchor, she could not take any measures to protect herself or to get out of the way, except by a look-out or by means of signals, and the 'Grant' was bound, if this boat was lying at anchor, stationary, and had not moved, the 'Grant' was bound to avoid that boat."

Excepted to at fol. 402.

Fifth.—In that the Judge charged (fol. 385–6), "but in the same connection, I charge you, as against this plaintiff, that when the 'Parker' blew this whistle to go to the right, the captain of the 'Grant' was bound to look at all the surrounding circumstances, as a prudent and careful man, and see and determine under those circumstances whether it was safe to answer the 'Parker's' first whistle and attempt to go to the right."

Excepted to at fol. 402.

Sixth.—In that the Judge charged (fol. 386), "the same rule applies to the two whistles that were given. You are to determine whether the 'Grant' blew two or three, and so far as that will aid you in arriving at a verdict, you will apply the same rule I have just stated."

Excepted to at fol. 402.

Seventh.—In that the Judge refused to charge as requested in the first request of The Eastern Transportation Line (fol. 402.)

Eighth.—In that the Judge refused to charge as requested in the eighth request to charge (fol. 405.)

Ninth.—In that the Judge refused to charge as requested in the ninth request to charge (fol. 405–6.)

FACTS OF THE COLLISION.

The facts of the collision, which bear upon the questions involved in the above assignment of errors, are as follows:

On the night of October 8th, 1875, the tug "U. S Grant" left a point in the North River near Hoboken, called the Stakes, having in tow four canal-boats, two on each side, which she was towing to New Haven, Conn. The outside boat on the starboard side of her was the "N. L. Lee," of which the plaintiff in the court below was the master. On board of her were his wife, the deceased, and his two children. The "Grant" had proper lights set and burning brightly, according to the regulations of the Statute of the United States. She had a competent pilot (her master) at the wheel and a competent look-out. The plaintiff in the court below, Captain Cooper, was himself in the pilot-house of the "Grant" and assisting in her navigation.

After leaving the Stakes, the "Grant" crossed the Hudson River, and then headed directly down stream. On her starboard hand, between her and the piers on the New York side, as she went down towards the Battery, was a towboat bound to Albany, having fifty or sixty boats in tow, and stretching out for 1.200 or 1.500 feet. The U. S frigate "Minnesota" lay at anchor out in the stream on the port hand of the "Grant," leaving an open fair way of several hundred yards in width between the frigate and the Albany tow. The tide was ebb, setting down the river with the "Grant," which was going at a usual rate of speed of six or seven miles an hour. (Fol. 336.)

In this position a single bright white light was seen ahead by the men in the pilot house of the "Grant," which was understood by both of them to be on a vessel at anchor. When at a distance of about 500 yards, however, it was found (steam being seen and a single whistle being heard) that the vessel carrying the light, which proved to be the schooner "McFarland," was not at anchor, but was in tow of a steamtug, the "J. N. Parker," which was alongside on the port side of the schooner.

The two steam tugs were then approaching head and head, and the "Parker" having blown one whistle, which was in accordance with the rules of the Supervising Inspectors, ported her wheel to pass to the right, as required by those rules, and by the Revised Statutes of the United States, § 4,233, Rule 18.

The pilot of the "Grant" also blew one whistle, and ported his wheel, as required by those rules and statutes.

Thereafter the pilot of the "Parker" *blew two whistles and starboarded his wheel.* The pilot of the "Grant" on hearing the two whistles, as he says, blew three whistles and immediately stopped and backed his engine. The plaintiff below testified that he blew two whistles and then three, and immediately stopped and backed his engine. This backing of the engine, the boats on the starboard side of the "Grant" being the heavier, swung the bows of the boats to port. The "N. L. Lee" came violently in contact with the schooner, and was torn away from the "Grant," and soon after sank, and Captain Cooper's wife and child were drowned before boats, which put off from the "Grant" and the "Minnesota," could reach the spot. Captain Cooper did not have on his boat at the time any life-preserver or boat, such as is referred to in § 4,492 of the Revised Statutes of the United States.

FIRST POINT.—The first question which is involved, and which it is sought to bring before the consideration of this Court, arises under the first and seventh assignments of error.

We insist that, on the facts above stated, the "N. L. Lee" was a "barge carrying passengers" within the provisions of § 4,492 of the Revised Statutes of the United States.

We insist that Mrs. Cooper and her children were "passengers" within the meaning of that section; that the master and owner of the "Lee" were made by § 4,493 personally liable for any injury caused by the failure of the "N. L. Lee" to comply with the provisions of § 4,492, and that such failure to comply with that section was negligence on the part of Captain Cooper.

The Judge having charged that if Captain Cooper was guilty of any negligence which resulted in the death of his wife, he could not recover (fol. 368), the defendants were entitled to have the jury told that a failure to comply with the Statute as to life-preservers and boats was negligence, leaving to the jury the sole question whether or not the death of Mrs. Cooper was the result of such negligence.

But the Judge refused to charge that Captain Cooper was negligent in this respect.

And the Judge charged that there was no law requiring "that a canal boat that is not used for the purpose of transporting passengers" should have life-preservers or life-boats.

This, taken in connection with the refusal to charge, was equivalent to charging that the "N. L. Lee" was not carrying "*passengers,*" and that, therefore, the section in question was not applicable.

But whether these persons were "passengers" is a question of the construction of the Federal Statute, as to which we claim the right to have the decision of this Court.

Second Point.—The second question which is presented for the consideration of this Court arises under the second, eighth and ninth assignments of errors.

a. This relates to the effect of the Rules for preventing collisions (§ 4233 of the Revised Statutes, Rule 18.)

We claim (1), that that Rule is imperative; (2), that a party who complies with it is entitled to be declared *by the Court* free from negligence in so doing; (3), that a party who fails to comply with it must be declared by the Court to have been negligent in so failing to comply; and (4), that the Judge at the trial denied each of the above propositions, and told the jury that although those propositions might be good law if the suit were between the owners of the "Parker" and the owners of the "Grant," in this case, being between Cooper, whose boat was in tow of the "Grant," and the owners of the "Grant," even if the jury believed that the master of the "Grant" did what that section of the law required, they might find him negligent in so doing.

In other words, we insist that the Judge told the jury that in this case, between these parties, they might find that compliance with a statute of the United States was negligence. And we insist that all parties who are compelled to be subject to that statute are entitled to protection at the hands of the Courts of the United States, in case they do comply with it; that a statute, which prescribes a duty, carries with it an immunity from being charged with negligence in the very performing of that duty.

b. It is claimed in behalf of the defendant in error that this section of Statute of the United States was not referred to. This is a mistake of fact. This section of the Revised Statutes was relied upon, referred to and discussed both by counsel and by the Court.

At fol. 346 it is stated that "the following sections of the Revised Statutes of the United States" were put in; and then follows, "consented by counsel that above reference is sufficient."

The number of the sections of the Revised Statutes is not stated in the record, but we submit that, inasmuch as the question before the court was one of navigation, the presumption would be that the section prescribing rules for navigation was intended.

And as plaintiff's counsel consented that such reference was "*sufficient,*" it does not lie in his mouth now to say that it was insufficient.

And as will be seen by the opinion of the Court of Appeals (fol. 453), the question which was argued before that court by counsel for the plaintiff in error, and decided by it, was whether "the rules of navigation *prescribed by* * * * Federal laws, had a different application and force as to the two steamers from what they should have between the plaintiff and the two steamers." And again at fol. 455 the court speaks of the rules as "rules of navigation *and law.*"

The court will certainly look at that opinion for the purpose of settling a doubt, if any should exist, as to the sections of the Revised Statutes of the United States, which were referred to on the trial.

Murdock *vs.* Memphis, 20 Wallace, 633.
Moore *vs.* Mississippi, 21 Wallace, 636.

THIRD POINT.—The third question is a similar one arising under the second, third, fourth and fifth assignments of errors, only that as to this question the effect, not of section 4233 of the Revised Statutes, but of the Inspectors' Rules, adopted under section 4405 of the Revised Statutes, is involved.

a. The brief of the counsel for the defendant in error (Point V) claims that these rules were not before the State Court. This is a mistake. These rules were before the Court and they are printed in the Record (fol. 347 to 359), and were the only rules, apart from the Statute (section 4293) itself, which were considered by the Court.

The counsel who prepared the brief on this motion, not being the counsel who tried or argued the cause in the State Court, has been misled.

It is true that the defendant Austin is stated, at fol. 346, to have put in "Rules of a board of Commissioners established by the Board of Pilot Commissioners." If this is anything more than a clerical blunder, it is still not of the slightest consequence. Those rules nowhere appear. But the Judge having said, "Consider all the rules in that are applicable" (fol. 346), the rules of the Steamboat Inspectors are printed in the Record, spoken of as the Inspectors' Rules by counsel for the defendant Austin (fol. 394), read as such by the Judge to the jury, and spoken of by the Court of Appeals as Rules of Navigation, "made in pursuance of Federal laws" (fol. 454).

b. These Inspectors' Rules have the force of law. The first part of the first Rule adopts the language of the 18th Rule of § 4233 and adds to it the requirement of the blowing of one whistle by the pilot of each boat.

And we insist that as to this Rule as well as the 18th Rule of § 4233, the Judge was in error in charging the jury that the Rule had a different application, in this case between these parties, from what it would have had in a suit arising out of the same collision between any other parties, as he did charge at fols. 376 and 386.

c. We think that no fair-minded man can read the Judge's charge at those folios, and not see that the jury must have understood that they might find the captain of the "Grant" negligent in answering the single whistle of the "Parker" by one whistle and porting his wheel; or negligent, after the single whistles had been exchanged and the "Parker's" two whistles came, in not answering them with two whistles and starboarding his wheel.

d. The Court will see that even though the Rule requiring vessels, meeting head and head or end on, to port and pass to the right were not held to be of universal application, yet the question of the application of the Rule cannot be at all dependent upon the parties to the suit, but must depend upon the facts of the navigation. If there were any circumstances, any facts in the case showing that by reason of difficulties in the navigation either party was excused from following the requirement of the Rule, he must be excused as against everybody. If there were no such difficulties, so that as against the approaching vessel he was bound to obey the Rule, then he was bound to obey it as to all parties. The captain of the "Grant" could not be required to obey the Rule as to the "Parker," and not to obey it as to the "N. L. Lee." It could not be that it should be left to a jury in this suit to say whether he was negligent in doing that which, if the suit were between the owners of the two steamers, it would be held that the law required him to do under the same circumstances.

Now, there was no fact in this case which raised any question whether the Rule was applicable to the case.

It was a case of vessels meeting head and head or nearly so (Opinion of General Term, fol. 446; Opinion of Court of Appeals, fol. 454). The vessels saw each other, and whistled, at a distance of 400 or 500 yards, ("four or five hundred yards," Cooper, 40; "four or five hundred yards," Williams, 208), in a fair way, 150 or 250 yards wide (Williams, 195; Cooper, 62), with no vessels in the way to embarrass them, with no fog, or storm, or cross-tide or current to hamper their action.

For such a case, the Statute of the United States and the Rules of the Inspectors must be imperative, and being so, it must not be left to a jury to say, in a case so peculiarly unfit to be submitted to their sympathies as this one, whether the party, who strictly follows the requirements of the law, is negligent in so doing.

FOURTH POINT.—The plaintiff in error claims this *right*, this *privilege*, this *immunity* under the Statutes of the United States, viz.:—that, the statute and the rules having made it imperative on the masters of these boats, in the circumstances in which they were, to port the wheels of their respective boats and pass to the right of each other, the plaintiff in error was entitled to have the Court declare that the master of the "Grant," who obeyed the law, was not negligent, and that the master of the "Parker," who disobeyed the law, was negligent; and was entitled to have the Court decline to submit to the jury as questions of fact, whether the captain of the "Grant" was negligent in that he obeyed the law, and whether the captain of the "Parker" was not free from negligence in that he disobeyed the law.

Whether the plaintiff in error is right in this claim, is the question which we desire to submit to this Court, after an argument of the case.

And we therefore claim that the case is strictly within the statute, and that the motion to dismiss should be denied.

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